3861.

SUPREME COURT OF THE UNITED STATES.

No. 120.

CRUZ CERVANTES, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE DISTRICT COURT U. S., FOR NORTHERN CALIFORNIA.

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Office of the Board of Commissioners to ascertain and settle the private land claims in the State of California.

Be it remembered that on this Friday, the twentieth day of February, anno Domini one thousand eight hundred and fifty-two, before the commissioners to ascertain and settle the private land claims in the State of California, sitting as a Board in the city of San Francisco, in the State aforesaid, in the United States of America, the following proceedings were had, to wit:

The petition of Cruz Cervantes, for the rancho of San Joaquin alias Rosa Morada, was presented and ordered to be filed and docketed No. 56, and is as follows, to wit:

CRUZ CERVANTES, claimant,
vs.
THE UNITED STATES, defendant. } No. 56.

Before the honorable the commissioners to ascertain and settle the private land claims in California.

Cruz Cervantes, a citizen of said State, gives notice that he claims, by virtue of a grant from the Mexican nation, a tract of land situated in the county of Santa Clara, in said State, and known by the name of San Joaquin or Rosa Morada, with the boundaries described in the grant thereof, to wit: on one side the arroyo of San Felipe; on the second side, the hills or mountains of San Joaquin; on the third, the arroyo of Santa Anna; and on the fourth, a line drawn through the plain of San Juan.

Said land was conceded to claimant by a grant issued on the 1st day of April, 1836, by Don Nicolas Gutienez, superior political chief ad interim of California, and thereby authorized to grant lands in the name and on behalf of the Mexican nation. On the 18th February, 1841, judicial possession was given to claimant by Juan Miguel Anzar, Judge of First Instance of that jurisdiction.

Said land has been occupied by claimant according to law and the directions contained in said grant, and is now held by him in quiet possession.

There is no conflicting grant to said land, or any part thereof, in the knowledge of claimant.

Said land has never been surveyed, but its boundaries are natural and well known, and may be easily traced. It is supposed to contain the quantity of two sitios de ganado mayor, more or less.

A copy and translation of said grant, and a copy of said act of judicial possession, are herewith presented, and the originals are ready to be produced and proved, as may be required.

Claimant requests a speedy examination of his said claim, and its recognition and confirmation.

(Signed) JONES, TOMPKINS & STRODE,
Attorneys for claimant.

Filed in office, Feb'y 20th, 1852.

GEO. FISHER, *Sec'y.*

Upon which petition the following subsequent proceedings were had in their chronological order, to wit:

FRIDAY, *Feb'y 27th*, 1852.

No. 56.

In case No. 56, Cruz Cervantes, the deposition of David S. Spence, a witness in behalf of the claimant, taken before Commissioner Hiland Hall, was filed, and is in the words and figures as follows, to wit: (Vide page 105 of this transcript.)

TUESDAY, *March 2d*, 1852.

In case No. 56, the deposition of Alexis Godey, a witness in behalf of the claimant, taken before Commissioner Harry J. Thornton, was filed, and is in the words and figures as follows, to wit: (Vide page 129 of this transcript.)

THURSDAY, *March 11th*, 1852.

In case No. 56, Cruz Cervantes, the secretary filed the translation of the original expediente, marked AHH, and annexed to the deposition of David S. Spence, a witness in behalf of the claimant, taken before Commissioner Hiland Hall, and filed in office on the 27th of February, 1852, which translation is in the words and figures as follows, to wit: (Vide page 119 of this transcript.)

TUESDAY, *March 16th*, 1852.

In case No. 56, Cruz Cervantes, the U. S. law agent made a motion to dismiss the case, and it is in the words and figures as follows, to wit: (Vide page 131 of this transcript.)

TUESDAY, *March 30th*, 1852.

In case No. 56, Cruz Cervantes, the deposition of Juan Castaneda, a witness in behalf of the claimant, taken before Commissioner Harry J. Thornton, was filed, and is in the words and figures as follows, to wit: (Vide page 131 of this transcript.)

TUESDAY, *April 13th*, 1852.

Case No. 56, Cruz Cervantes, San Joaquin alias Rosa Morada, set for argument for 22d inst.

THURSDAY, *April* 22*d*, 1852.

Case No. 56, Cruz Cervantes, San Joaquin alias Rosa Morada, being set for hearing for to-day, was continued to Thursday, the 29th inst.

MONDAY, 26*th April*, 1852.

In case No. 56, Cruz Cervantes, the deposition of Francisco Perez Pacheco, a witness in behalf of the claimant, taken before Commissioner Harry J. Thornton, was filed, and is in the words and figures as follows, to wit: (Vide 134th page of this transcript.)

WEDNESDAY, *April* 28*th*, 1852.

In case No. 56, Cruz Cervantes, the deposition of William E. P. Haitwell, a witness in behalf of the claimant, taken before Commissioner Harry J. Thornton, was filed, and is in the words and figures as follows, to wit: (Vide page 138 of this transcript.)

THURSDAY, *April* 29*th*, 1852.

Case No. 56, Cruz Cervantes, rancho of San Joaquin alias Morada, was called; argument commenced by Mr. Strode, one of the counsel for the claimant, followed by G. W. Cooley, U. S. law agent, and continued for to-morrow.

In case No. 56, Cruz Cervantes, the following witnesses having been sworn before the board, declared as follows, to wit:

George B. Fugly stated: Supposing the rancho to be fourteen leagues distant from Monterey, I think that the nearest it approaches the seashore is more than ten leagues; but I do not know the boundaries of the said rancho.

Henry W. Hallek stated: I think from measurements made in the vicinity, that the rancho is forty miles from the general line of the coast, and at least thirty miles from the nearest indentation of the bay; but I do not know the boundaries of the said rancho.

FRIDAY, *April* 30*th*, 1852.

In case No. 56, Cruz Cervantes; argument by the U. S. law agent resumed, and case continued for further argument.

SATURDAY, *May* 1*st*, 1852.

In case No. 56, Cruz Cervantes; argument by Mr. Strode, one of the counsel for the claimant, resumed, and the case continued to Tuesday, May 11th.

TUESDAY, *May* 11*th*, 1852.

This being the day appointed for resuming the argument in case No.

56, Cruz Cervantes, Commissioner Wilson announced from the board that Commissioner Hall being prevented by sickness, and Commissioner Thornton by the melancholy intelligence received by mail of the death of his daughter, consequently the majority of the board not being present, all matter set for hearing to-day is continued to Tuesday, 18th May inst.

May 18th, 1852.

Case No. 56, Cruz Cervantes, continued for further argument.

May 25th, 1852.

Case No. 56, Cruz Cervantes, was called and continued.

FRIDAY, *June 4th*, 1852.

Case No. 56, Cruz Cervantes, San Joaquin alias Rosa Morada, called; the argument for the claimant resumed by William Carey Jones, esq., one of the counsel, and continued for to-morrow at 11 o'clock a. m.

SATURDAY, *June 5th*, 1852.

Case No. 56, Cruz Cervantes, San Joaquin alias Rosa Morada, called; the argument of the counsel for the claimant resumed and concluded, and the case continued to Thursday next, 10th instant, at 11 o'clock a. m.

THURSDAY, *June 10th*, 1852.

Case No. 56, Cruz Cervantes, San Joaquin alias Rosa Morada, called; and on motion of the United States law agent, continued to Tuesday next, 15th instant, at 11 o'clock a. m.

TUESDAY, *June 15th*, 1852.

Case No. 56, Cruz Cervantes, San Joaquin alias Rosa Morada, called; argument by the United States law agent resumed, and case continued to to-morrow at 11 o'clock a. m.

WEDNESDAY *June 16th*, 1852.

Case No. 56, Cruz Cervantes, San Joaquin alias Rosa Morada, called; argument by the United States law agent resumed and concluded, and the case taken under advisement by the board.

In the same case the United States law agent filed the colonization law of August 18th, 1824, marked exhibit "D," and extracts from the journal of the departmental junta, marked exhibit "E," as evidence in behalf of the United States, which exhibits are in the words and figures as follows, to wit: (Vide pages 143, 153 of this transcript.)

In the same case the secretary filed translations of exhibits D and E, filed by the United States law agent this day, as evidence in behalf of the United States, which translations are as follows, to wit: (Vide pages 147 of this transcript.)

WEDNESDAY, *June* 30*th*, 1852.

In case No. 56, Cruz Cervantes, San Joaquin alias Rosa Morada, the counsel for the claimant filed an authenticated copy of an original Spanish document on file in the office of the United States surveyor general for California, entitled "Index of land titles," accompanied by a letter dated June 29th, 1852, signed Samuel D. King, surveyor general, and addressed to Wm. Carey Jones, esq., as evidence in behalf of the claimant in this case; which document and letter having been admitted by the board with the consent of the United States law agent as evidence, it was ordered to be spread on the records, marked exhibits F and G, and are in the words and figures as follows, to wit: (Vide pages 158, 160 of this transcript.)

In the same case the United States law agent submitted to the board as evidence in behalf of the United States copies of two original Spanish documents on file in the office of the United States surveyor general for California, authenticated by the said surveyor general, which copies were filed in this case March 22nd, 1852, as exhibits A and C, with their respective translations, and are as follows, to wit: (Vide pages 161, of this transcript.)

SATURDAY, *July* 3*rd*, 1852.

In case No. 56, Cruz Cervantes, for the place called San Joaquin alias Rosa Morada, the United States law agent in behalf of the United states filed and submitted as evidence an authenticated copy from the United States surveyor general, of the general regulations for the colonization of the territories of the Mexican republic, dated 21st November, 1828, which, marked as exhibit "H," was ordered to be filed among the papers in this case, and is as follows, to wit: (Vide pages of this transcript.)

In the same case the secretary filed the translation of the general regulations, marked exhibit H, and above described, and is as follows, to wit: (Vide page of this transcript.)

TUESDAY, *August* 3*rd*, 1852.

Case No. 56, Cruz Cervantes, for the place called San Joaquin alias Rosa Morada, being called; Commissioner Harry J. Thornton delivered the opinion of the board declaring the claim valid. The entering of the decree of final confirmation being reserved for a future day.

TUESDAY, *August* 31*st*, 1852.

In case No. 56, Cruz Cervantes, for the place called San Joaquin alias Rosa Morada, the counsel for the claimant presented the following motion, to wit:

Motion.—Ordered that the decision of the board heretofore rendered, on the validity of the claim of Cruz Cervantes, case No. 56 on the

docket of the board, be certified, together with the reasons on which the same is founded, to the United States district attorney.

By his Attorneys,
JONES, TOMPKINS & STRODE.

The above motion was taken under advisement.

WEDNESDAY, *September 1st*, 1852.

In case No. 56, Cruz Cervantes, for the place called San Joaquin alias Rosa Morada, the motion filed on yesterday by the counsel for the claimant was overruled, and the order therein prayed for denied.

MONDAY, *September 6th*, 1852.

In case No. 56, Cruz Cervantes, for the place called San Joaquin alias Rosa Morada, the counsel for the claimant filed the following motion, to wit:

Motion to certify the decision of the board.

In this case it is conceded and agreed on the part of the claimant, that the land claimed is south of the 37° of north latitude, and in the southern judicial district of California, as fixed by the law establishing district courts of the United States in said State; and said claimant asks that the decision rendered by said commission on the validity of his said claim be certified, together with the reasons on which it is founded, to the district attorney of the United States according to law.

By his Attorneys,
JONES, TOMPKINS & STRODE.

Which was taken under advisement by the board.

MONDAY, *September 13th*, 1852.

In case No. 56, Cruz Cervantes, for the place called San Joaquin alias Rosa Morada, the motion of the counsel for the claimant heretofore filed on the 6th instant was overruled and the petition denied.

MONDAY, *September 27th*, 1852.

No. 56.—Motion for the withdrawal of original papers.

In case No. 56, Cruz Cervantes, for the place named San Joaquin alias Rosa Morada, the counsel for the claimant, Mr. Jones, moved the board for leave to withdraw the original papers in the above case, certified copies of the same heretofore filed with the petition to remain on file in the office.

Which motion was taken under advisement.

MONDAY, *December 13th*, 1852.

In case No. 56, Cruz Cervantes, for the place named San Joaquin alias Rosa Morada, the counsel for the claimant filed the following motion, to wit:

In this case the claimant, by his counsel, moves the board for a certificate according to law of the confirmation of said claim, as rendered on the 3rd day of August, 1852.

(Signed) JONES, TOMPKINS & STRODE,
Attorneys for claimant.

Which motion was taken under advisement.

TUESDAY, *December* 14*th*, 1852.

In case No. 56, Cruz Cervantes, for the place named San Joaquin alias Rosa Morada, the motion filed on yesterday by the counsel for the claimant was overruled, and the order therein prayed for denied.

SATURDAY, *December* 18*th*, 1852.

In case No. 56, Cruz Cervantes, for the place named San Joaquin alias Rosa Morada, Commissioner Hiland Hall delivered his opinion in this case.

In the same case Commissioner Harry J. Thornton delivered his final opinion and the decree of final confirmation of this board.

Order for the recording of opinion, &c.

Ordered, That the opinion of this board, delivered by Commissioner Harry J. Thornton, on the 3rd day of August, 1852, the several opinions delivered this day, and the decree of final confirmation of this board, also delivered this day in this case, be recorded on the journal, which are in the words and figures, to wit:

Opinion of Commissioner Harry J. Thornton.

CRUZ CERVANTES, claimant,
vs.
The UNITED STATES, defendant.

Before I enter upon the consideration of the questions which relate directly to the validity of the claim in this case, I will give my views upon the subject upon which this board was intended to act, and of the foundations upon which any opinion that I feel authorized to give must rest, under the act of the 3d of March, 1851. A distinct annunciation of this basis is not only due to those who are to be affected by the administration of this act of Congress, but being settled in my own mind, will serve as the polar star to guide me through the wide tract of conflicting opinions which have the subject of an anxious and protracted discussion. The 8th and 11th sections of the act, taken together, furnish the chart of our procedure. In the first named, i. e., the 8th, it is enacted that each and every person claiming lands in California by virtue of any right or title derived from the Spanish or Mexican government, shall present the same to the said commissioners when sitting as a board, together with such documentary evidence and testimony of witnesses as the said claimant relies upon in support of such claims; and it shall be the duty of said commissioners, when the case

is ready for hearing, to proceed promptly to examine the same upon such evidence, and upon the evidence produced in behalf of the United States, and to decide upon the validity of the said claim; and within thirty days after such decision is rendered, to certify the same, with the reasons on which it is founded, to the district attorney of the United States in and for the district in which such decision shall be rendered. This section declares fully the subject matter upon which we are to decide; that is, the validity of any right or title derived from the source mentioned; it declares the evidence upon which alone that decision is to be rendered, being that introduced by the claimant on the one side, and the United States on the other.

Having thus stated the subject matter and the evidence upon which we are to decide it, in the 11th section it proceeds, with the same distinctness and precision, to declare the law by which we shall be governed. That section is in the following words: "That the commissioners and the district and supreme courts, in deciding upon the validity of any claim brought before them under the provisions of this act, shall be governed by the treaty of Guadaloupe Hidalgo, the law of nations, the laws, usages and customs of the government from which the claim is derived, the principles of equity, and the decisions of the Supreme Court of the United States so far as they are applicable."

With respect to the subject matter of our action and the evidence upon which that action is to be had, the line of our duty as prescribed in the 11th section of the act is palpable and easy to be pursued. But in the 11th section, which declares the law that is to govern us, a broad field is opened to our view, and each landmark demands the most particular regard. The treaty of Guadaloupe Hidalgo is the first in the order of enumeration. This treaty contains nothing more, so far as bears upon this case, than a recognition of the doctrine which is enforced in the second head of the law of nations, viz., that in all cases of the acquisition of foreign territory by annexation, the private property of the former inhabitants shall be held inviolate. The next enumerated ground of decision is the laws, usages and customs of the former governments from which the claim is derived. This embraces all the written laws which authorize and regulate the disposition of the public domain, as also all those laws which relate to the form, the construction, and whatever else may affect the instruments of conveyance employed for that purpose, and to the conditions which are annexed or which are authorized to be annexed to the grants in question. The customs and usages of the country, as they may relate to the same subject, are also to govern us. There is no great difficulty in determining the nature and extent of the influence of those laws, customs and usages upon the subjects to which we are to apply them; but I have felt more difficulty on the question how far are we to notice them judicially without their being brought before us like foreign laws, duly authenticated or established by the evidence appropriate to their respective natures. The correct adjustment of this question is of great importance to the parties in the causes submitted to this board, and I feel bound to

is ready for hearing, to proceed promptly to examine the same upon such evidence, and upon the evidence produced in behalf of the United States, and to decide upon the validity of the said claim; and within thirty days after such decision is rendered, to certify the same, with the reasons on which it is founded, to the district attorney of the United States in and for the district in which such decision shall be rendered. This section declares fully the subject matter upon which we are to decide; that is, the validity of any right or title derived from the source mentioned; it declares the evidence upon which alone that decision is to be rendered, being that introduced by the claimant on the one side, and the United States on the other.

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advert to it, as it has created some difficulty in my mind in consideration of the points arising in them.

With regard to the unwritten customs and usages, to which are imparted by the act constituting this board the force and effect of unwritten law; their establishment, as it seems to me, requires the application of the rules governing the proofs of other facts. Those whose rights are to be materially affected by them ought to have the opportunity of examining the sources from which they are derived, or the witnesses who communicate them, and be allowed to shbw by other witnesses that such is not the custom or usage, or even to discredit the witnesses who testify to them.

The difficulty which I feel on this subject is not removed by the recent decision of the Supreme Court of the United States, reported in 11th Howard, 668, United States *vs.* Furner & Co. The court was not called upon to do so, nor do I think they did decide this question in that case. It seems that the counsel for the appellees moved for an issue to be tried by a jury, whether the grant in question was perfect and complete or not by the laws of Spain in force in the Province of Louisiana, when it was made. The Supreme Court decided that there was no error in the court below to grant that motion, and proceed to say: "The Spanish laws which formerly prevailed in Louisiana, and upon which the titles to land in that State depend, must be judicially noticed and expounded by the court, like the laws affecting the titles to real property in any other State. They are questions of law and not questions of fact, and are always so regarded and treated in the courts of Louisiana; and it cannot be maintained in the courts of the United States that the laws of any State of this Union are to be treated as the laws of a foreign nation, and ascertained and determined as a matter of fact by a jury upon the testimony of witnesses; and if the Spanish laws prevailing in Louisiana before the cession to the United States were to be regarded as foreign laws, which the courts could not judicially notice, the titles to lands in that State would become unstable and insecure, and their validity or invalidity would in many instances depend upon the varying opinions of witnesses and the fluctuating verdicts of juries, deciding upon questions of law which they could not, from the nature of their pursuits and studies, be supposed to comprehend." Now, if all that was intended by the court was, that the construction, the ascertainment and determination of the force and effect of a foreign law were not matters proper to be referred to the decision of a jury, and that the proof of such law was not for them but for the court, then the decision would be in accordance with the settled doctrine. (Consequa *vs.* Willnig, Peters' C. C. Reports, 225.) So also if the court intended to decide that the courts of the United States would notice judicially the laws of a state, and that the laws in question were to be regarded as the laws of Louisiana by virtue of their recognition as such by the judicial tribunals of that State, the particular point now mooted would not be embraced in that decision, for in the absence of any

means by the publication of the decisions of the tribunals of California, I do not know what those decisions are. But if the Supreme Court in the case in 11th Howard above cited is to be considered as deciding, that because the laws of Spain once existed in Louisiana and continued to control, and even to constitute a part of, the titles which were made under them to many citizens then subjects to Spain, but now of Louisiana, they were on that account now to be regarded as the laws of Louisiana and not as foreign laws; then it seems to me that the decision is not in accordance with, but prior to the determination of the court, so explicitly made that I do not think that it would have been overruled without making the slightest allusion to it. In the case of the United States and Wiggins, reported in 14th Peters, 345, brought up from Florida and decided under an act of Congress requiring, as the act of 3d March, 1851, does, the claims to be adjudged and determined, among other things, by the laws, usages and customs of the former government, the opinion of the court contains the strong language which I quote: "Much evidence was adduced to prove the practice and rules in use in the offices of the Spanish government from which titles to land issued. We think that the evidence was admissible. The existence of a foreign law, especially when unwritten, is a fact to be proved like any other fact, by appropriate evidence. The Spanish Province of Florida was foreign to the country in 1815, when the transaction referred to purports to have taken place. The practice of the government in disposing of the public domain may be proved by those familiar with the customs; and there is in the record very satisfactory proof by witnesses of the laws and customs governing the provincial authorities. If the court in this case had merely declared that such evidence was admissible, and that the admission of such proof even to establish a matter of law which would be judicially noticed without such proof, was not ground of error, being only supererogatory, doing no injury, but perhaps affording facility to the court in coming to the accurate knowledge of it, then nothing could be deducted from the decision material to the question; but the language is strong and emphatic in the declaration of a positive rule of law upon the subject.

It may be that the decision in the 11th Howard goes to the extent of settling this question against the view taken in 14th Peters, though I am inclined to the opinion that it was founded, so far as it goes beyond the overruling the allegation of error in the court below, for refusing to submit the question to a jury upon the fact that in Louisiana the former laws of the country were continued in force after the change of government, whereas in Florida as in California the English common law is adopted by the legislature as the fundamental rule of jurisprudence. It cannot fail to be observed, that the remarks made by the chief justice in delivering the opinion in 11th Howard, as to the consequences of a different course from that pursued by the court below, have no application unless they relate to the determination of the force and effect and construction of those laws by a jury instead of by the

court; because, instead of whether they are noticed judicially, or introduced and proved to the court, the result would be the same as to the stability and security of titles, for in either case the court and not the jury would ascertain and expound them, and the same stability and security be attained in one case as in the other.

The next legal ground to govern us in our decisions is the principles of equity. What meaning is to be attached to the term "principles of equity" wherever they occur in any act of the Congress of the United States, I apprehend admits of no doubt. They are those principles which form that venerable fabric known to the American people as the system of equity jurisprudence. It is a monument whose chief corner stone was laid by Lord Hardwick, but whose superstructure has been gradually erected by the co-operation of men of the brightest intellects and the purest characters who have ever adorned the ermine. Many of its proudest contributions have been furnished by illustrious citizens of our own country, who have left their works behind them. In this department of human excellence, the tribute of grateful recollection should always be paid to the names of Marshall and Kent and Story. It will be our humble duty to make the application of those principles to the cases as they arise, taking care in doing so not to forget that equity, illustrious as she is, is still but a handmaid to the law, and that one of her cardinal maxims is "Equitas sequitur legem."

The last ground of law enumerated in the section of the act mentioned above, to govern us in determining upon the validity of claims, is the decisions of the Supreme Court of the United States so far as applicable. In entering upon this ground of adjudication, I will remark, that the opinions of that honored tribunal ought to command the respect of all inferior jurisdictions; and not only is that general obedience enjoined us, but especial reference is had to that body of learning which has through years of patient investigation been amassing in their reports upon the various questions of public law and private rights arising under the treaties by which we acquired foreign territory, and upon acts of Congress passed in reference to them, and especially to those decisions which have been made upon laws passed after and with reference to the treaties of Paris and Washington, by which we acquired Louisiana and Florida. To determine the applicability of those decisions to questions arising under the treaty of Guadaloupe Hidalgo, by which we acquired California, and of the act of the 3d of March, 1851, it is proper to compare those treaties and laws with this last treaty and act of Congress. The stipulations of those treaties, so far as involved in this matter, I will briefly state. In the 2d article of the treaty of Paris the terms of cession of public domain are as follows: "The islands belonging to Louisiana, all public lots and squares and vacant lands, &c., which are not private property," excluding by the strongest implication a cession to the United States of any private property. In the 3d article, after the stipulation to incorporate the inhabitants in the Union with the enjoyment of all the rights, advantages, and immunities of citizens of the United States,

it concludes with the words "and in the mean time they shall be maintained and protected in the free enjoyment of their liberty, property, and the religion which they profess." By the treaty of Washington, in the 2d article, as in the treaty with France, a cession is made of all islands, vacant lands, &c., which are not private property. And a special article is introduced, being the 8th, that all grants of land made before the 24th January, 1818, by his Catholic majesty, or by his lawful authorities, in the said territories ceded by his majesty to the United States, shall be ratified, (or as now understood,) stand ratified and confirmed to the persons in possession, &c., to the same extent that the same grants would be valid if the territories had remained under the dominion of his Catholic majesty. By the treaty of Guadalupe Hidalgo the right of private property of the former inhabitants is protected, at least as far as the law of nations could have protected it, without any provisions in the treaty. The stipulation of the 9th article, which is the only one applicable to the case of persons occupying the attitude of the claimant in this case, has been interpreted to mean a stipulation of maintenance and protection in their property, as well after the admission of the State into the Union as before; the acts of Congress passed with reference to the lands acquired under those treaties, and which have been the subject of judicial construction in the cases especially referred to in the act of the 3d of March, 1851, as being one of the governing rules of our decisions, are: First. The act of 26th of May, 1824, entitled An act to enable the claimants to lands within the State of Missouri and Territory of Arkansas institute proceedings to try the validity of their claims, by which the courts were opened to decide on claims under the treaty of Paris, of 1813, of a certain class which were not perfect, but which might have been perfected into a complete title, under and in conformity to the laws, usages, and customs of the government under which the same originated, had not the sovereignty of the country been transferred to the United States. Second. An act of the 23d of May, 1828, extending, with some modifications unnecessary here to mention, the act of the 26th of May, 1824, over Florida; and, Third. The act of June the 17th, 1844, extending over Arkansas, Missouri, Louisiana, and those parts of Mississippi and Alabama south of the 31° of north latitude, and between the Mississippi and Perdido rivers. By the provisions of these laws any grant, concession, warrant, or order of survey legally made, granted, or issued, and which might have been perfected into a complete title, but for the change of sovereignty, under and in conformity to the laws, usages, and customs of the government under which they originated, could be presented to the United States district court, &c. The treaty of Guadalupe Hidalgo and the law of nations must be conceded to impart the same sanctity to private property in California as is conferred upon it by the treaty either of Washington or of Paris. The act of 3d of March, 1851, authorizes the presentment before this board of any right or title derived from the Spanish or Mexican government.

It is necessary, before we are authorized to adopt any decision of the

Supreme Court of the United States relating to the validity of titles, to see to their applicability. What is there in the acts above adverted to which gives a more enlarged scope of adjudication under them than is given under the act of the 3d of March, 1851? The terms any grant, concession, warrant, or order of survey, are not more comprehensive, if as much so, as those adopted in this act under which we are now acting, viz: any right or title. If no property of any kind were conferred by the laws, usages, and customs in the case of grants, concessions, warrants, or orders of survey, neither the treaties nor the law of nations would require them to be regarded, nor does Congress by her acts profess that she would be authorized to maintain or protect any thing less than an inceptive or imperfect title. Those terms, then, in those different acts are of equivalent signification. In 11th Howard, 580, the court say, "the word title in our statutes expressly means equitable rights short of complete grants and perfect titles." It means equity, emphatically. In the act of 3d March, 1851, it means that much beyond all doubt; and not being qualified by the controlling terms which those acts contain, it means more than mere equity, that is, full and perfect titles also; the want of applicability of the decisions of the Supreme Court of the United States to the questions arising before this board cannot be founded on any difference in the cases arising under the law of nations, the treaties, or the acts of Congress under which they were made; all these concur on one point, which is, that all property of the former inhabitants shall be maintained and protected to the extent that it existed under the former governments.

It was true, as was to be expected in a new field of legislation, that there was, in some instances, inconsiderate, not to say harsh and oppressive, legislation; but its general tenor, whilst it sustained the rights of the nation, has preserved good faith towards the former inhabitants of the acquired country. In the general there has been a magnanimous liberality extended, both as regards political privileges and the property of those who were thus about to become adopted children of our great Republic. The condition of the nations of California was one peculiarly calculated to demand not only the best faith, "uberima fides," but the sympathy and fostering care of the new government. They were first conquered and then transferred, in violation of their feelings, of their prejudices, of their native habitudes, from a government whose pressure they had never felt, under which they were at least enjoying the homes of their birth. They were driven into stranger hands, of whose laws, of whose language, and of whose disposition towards them they were wholly ignorant, trembling with anxiety at their new positions, and looking forward with fearful apprehensions of further chances and changes in their fortunes. Not unmindful of the obligations of humanity and of the law of nations, which has ever been respected as the common arbiter by all civilized communities, the course of the Congress of the United States, commencing with the legislation on the territories embraced by the cession of the State of Georgia to the United States in 1802, down to the acquisition of this

country, has been marked by a spirit of progressive liberality and relaxation in favor of the claimants or grantees of land under their former governments. This favorable consideration of all bona fide claimants manifests itself by embracing in subsequent acts descriptions of claims not embraced in former acts; by extending the time in which notices of claims and the production of evidence were required; by giving authority to the judicial tribunals and boards of commissioners not only to decide upon such claims, but to revise and confirm such as had been rejected. Nor is this last act of the 3d of March, 1851, under which we are now sitting, an exception to this general rule of liberal legislation. It expressly recognises, in the broadest terms, any right or title, which terms I have shown are at least as comprehensive as used in any former act. Nothing more could be done than this, except to say that claimants should be confirmed in their claims without any right or title. To have exercised more liberality on this head would have been what neither the law of nations nor the treaty required, and what justice to the people of the United States at large would have utterly forbidden. Neither the law of nations nor the treaty of Guadalupe Hidalgo, which last is indeed exceedingly meagre on the subject of the property of those who should remain in the country and become American citizens, can act like alchemy and convert every thing, even a permissive occupancy, into a full, perfect, and complete title in fee simple. Whatever scintilla of title was under the former government is to be protected and maintained; but it is necessary that the right should be made known, and not rest upon the "ipse dixit" of a claimant. Some mode must be adopted to ascertain what is to be maintained and protected; and, to my mind, the act of the 3d of March, 1851, provides us a simple, and easy, and equal way of ascertaining the existence of any right or title, the ascertainment of which was of more pressing importance to the former inhabitant, as every day's experience demonstrates, than to the Government of the United States.

Having taken this cursory view of former treaties and laws, and compared them with that of Guadalupe Hidalgo and the act of the 3d of March, 1851, with the view of deciding upon the applicability of the decisions of the Supreme Court of the United States to the claims before this board, I will here state generally *that* two great leading principles resulting from those decisions, leaving the particular points established in them to be applied to the several propositions or questions as they may come under the consideration in the further view of this case. The first of those great leading principles was announced by the court as early as 1836, in the case of Smith vs. The United States, 10th Peters, 330, 331, and is affirmed in 11 Howard, 88. In the last case the court say, in reference to this principle: "This was the rule laid down for our government in 1836 in the case of Smith vs. The United States, 10th Peters, 330, 331, and which has been uniformly followed since." As the language of the court introductory of the rule, as well as in laying down the rule itself, varies slightly, I

will quote it as laid down in both instances. In 10th Peters it is thus: "In every case arising under the law, one general question was presented for the consideration of the court, whether, in the given case, a court of equity could, according to its rules and the laws of Spain, consider the *consider the* conscience of the king to be so affected by his own or the acts of the lawful authorities of the province that he had become a trustee for the claimant, and held the land claimed by an equity upon it, amounting to a severance of so much of his dominions. In the 11 Howard, 88, it is laid down in the following words: By the act of 1824 we are authorized to exercise the powers of a court of equity, and to adjudge in the given case whether a court of equity could, according to the rules and laws of Spain, consider the consoience of the king so affected by the acts of his lawful authorities in the province that he became a trustee for the claimant, and held the land claimed by an equity upon it, amounting to a severance of so much from the public domain, before and at the time the country was ceded to the United States. The second general rule is that which is adopted by the court in many cases, in 5th Wheat., 359, 4th Cond. Reports, 681, 3d Peters, 92, 19th Peters, 215; and which, although not in the least departed from, may have the supplemental addition contained in 11th Howard, 127. I will give the general rule as laid down in 15th Peters, 225, in the words of the court: "We apply to the case the laws and ordinances of the government under which the claim originated, and that rule which is of universal application in the construction of grants, which is essential to their validity, that the thing granted should be so described as to be capable of being distinguished from other things of the same kind, or to be capable of being ascertained by extraneous testimony. The supplement to which I referred above in 11th Howard, 127, in which case the concession, being wholly indefinite in itself, needed, if sustained at all, something more to constitute such a severance from the public domain as is always required. Those additional requisites are said to be supplied either by actual survey or by some ascertained limits or modes of separation recognised by a competent authority. Having stated, with as much brevity as was consistent with perspicuity, the grounds upon which the board is required to act, both as to the evidence and the law in deciding on the validity of the claim, I will now proceed to consider whether, in the view of those principles, the claim of the present claimant is valid or not. It is founded upon a grant dated April 1st, 1836, signed by Nicolas Gutierrez, political chief or governor at the time of the Territory of Upper California. There is no question of the genuineness of the grant, whatever may be its legal effect, or that Gutierrez was the political chief or acting governor at the time. The evidence on file from the public archives proves all these facts. Whatever royal decrees of the Spanish monarchy, of the Spanish Cortes, of the empire of Mexico under the domination of Iturbide, under the name and style of *of* Augustine the First, or of the Mexican republic, may have been in force prior to the 18th of August, 1824, there is no doubt that at this date of this grant

the decree of the Mexican republic of the last mentioned date, and the ordinance of the 21st November, 1828, issued by the federal executive of the republic, in pursuance of the 16th article of the said decree of the 18th August, 1824, were in full force, that the grant in this case was made with especial reference to that decree and ordinance for its only support. Other decrees concerning the disposition of the public domain and the settlement or colonization of this republic, we know, existed prior to the date of the last mentioned decree and ordinance; and so far as they have not been repealed expressly, by subsequent legislation or by necessary implication, from their total incongruity or conflict with those, they certainly still remained in force. However, this decree and ordinance, as to rural grants, like the one now under consideration, cover the whole subject so completely as to leave little else for any prior decrees to operate upon, their chief efficacy consisting in the light which they afford in the construction of that decree and ordinance.

As constant reference must necessarily be made to the decree and ordinance under which this grant was executed, to decide on its validity, and for greater convenience, and out of abundant caution, in view of their having once been foreign laws, however they may now be regarded, they have been introduced into the record by the law agent of the United States, duly authenticated from the archives in the legal custody of the surveyor general of the United States for California, and constitute a part of the evidence in this case.

This decree of the Mexican congress was a general law upon the subject of colonization, which professes as its chief ends and aim the settlement (cultivation and inhabitancy) of the vast public domain of the nation, by means of grants in full property to her own citizens, and to foreigners, provided that they should submit themselves to the laws of the country. The second section of that law provides that "those lands of the nation are the objects of this law which, being neither the property of any individual, nor belonging to any corporation or town, may be colonized." The third section declares that "for this purpose the (congresses) legislatures of the States shall form with the greatest dispatch laws or rules of colonization within their respective demarcations, conforming themselves in all respects to the constitutive act, the general constitution and the rules established in this law." The fourth section is in these words: "the lands comprehended within twenty leagues, bordering upon any foreign nation or within ten leagues of the sea coast, diez liborates, shall not be colonized without the previous approbation of the supreme general executive power." The sixteenth section of the decree is in these words: "the executive, in conformity with the principles established in this decree, shall proceed to the colonization of the territories of the republic." This decree was enacted, as stated above, on the 18th of August, 1824, after the establishment of the Acta Constitutiva de la Federacion, which was on the 31st of January, 1824, and before the establishment of the Constitution de las Estados Unidos Mejicanos, the formation of which, however, was

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clearly in the minds of the congress at the passage of this decree. The executive did not proceed to the colonization of the territories of the republic until the 21st of November, 1828, when he promulgated his general rules or ordinance for that purpose, independently of the direction contained in the 16th section of the decree of the 18th of August, 1824; by the 13th article of the Acta Constitutiva, he was required to make "decrees or orders for the better execution of the constitution and the general laws;" and also by the 2nd article of the 4th title of the federal constitution of the United Mexican States, it was his duty to make ordinances, decrees, and rules for the more exact fulfilment of the constitution, the "Acta Constitutiva, and general decrees; he prefaces his ordinance of the 21st of November, 1828, with the following preamble: it being provided in the 16th section of the general decree of colonization of the 18th of August, 1824, that the executive, in conformity with the principles established in said decree, proceed to the colonization of the territories of the republic; and it being most proper, in order to give the said article the most adequate and exact fulfilment, to dictate some general rules that its execution may be expedited in the cases that may be occurring, the E. S. president has thought proper to determine on the following articles. The first article in that ordinance is in the following words: "Authority is given to the political chiefs, that in conformity with the decree of the several congress of the 18th of August, 1824, and the conditions herein expressed, they may grant vacant lands in their respective territories to impresarios, families, to individual persons whether Mexican or foreign, who wish it to cultivate or inhabit them. The last article of this ordinance relates to the missions, and is as follows: In the territories in which there are missions, the lands which they occupy cannot be occupied, cannot be colonized at present, and until it be determined whether they are to be the property of the establishments, (reducciones,) neophytes, catechumens, and Mexican settlers. To disembarrass this case from any consideration of the objection on the score of this last article, I will observe that the record contains a disclaimer of any right on the part of the mission; and the proof is that the land solicited and granted was not occupied by the mission.

This statement of the decree of the 18th of August, 1824, and ordinance of November 21st, 1828, will suffice to give a general outline of the scheme or plan of granting the Mexican domain, under which the claimant derives his title. As other articles of them may be required to be considered in the course of this opinion, they will be introduced into it.

The first question that presents itself at the very threshold of our inquiry into the validity of the title of the claimant is that which grows out of the fourth section of the decree of the 18th of August, 1824, and will be called, for the convenience of expression, the litoral league question. The discussion of this question (on which depends such vital interests) by the counsel in this case, by the law agent of the United States, and by other gentlemen of the bar who have submitted

cases now in our hands for decision, has been marked by that diligence of investigation, legal acumen and forensic ability, which was demanded by the subject and fully met in its argument.

Before entering upon the consideration of this first point, I will suggest that it is by no means clear to my mind that the land claimed in this case lies within the litoral leagues. There does not appear in the evidence (indeed the contrary is conceded on all hands) that there ever was any line marked out by the Mexican government that would indicate the country embraced within them. It would be very difficult to ascertain with any precision, but by means of an actual measurement, the tract of such a line along the coast of California; and having been never in any manner ascertained, I suppose it will be conceded, without controversy, that we cannot judicially know it except where the coast is one of the calls in the grant. The evidence in the course of the witnesses is such as we might expect from the nature of the thing, exceedingly unsatisfactory. The law agent of the United States relies upon a document accompanying the expediente as found in the archives, being the return of the ayuntamiento of the city of Monterey, to whom was referred by the political chief the question of the fitness of the grant to the petitioner, which return states that the land is within the ten litoral leagues; the grant was made by the governer notwithstanding. But it is very apparent that his grant is no evidence that the return was untrue, for the fact, when self-evident, presented no obstacle to a grant, as the evidence shows particularly the document in evidence from the archives containing the proposition of Jimeno, and the proceedings had upon it in the departmental junta in 1840. It may be that the inquisition of the ayuntamiento may bind the claimant as res adjudicata, though I do not think so; yet as the impression may be erroneous, and the question has been treated as though it might arise and has been fully argued, I will proceed to give my opinion upon it.

The solution of this question requires that one should examine narrowly both the decree of the 18th of August, 1824, and also the ordinance of the 21st of November, 1828, which, in fact, are necessarily connected; the latter merely educing for practice all that was involved in the former, which was its only legitimate office. It has been contended by the counsel in this case of the claimant, that whatever else might have been the object or motive of the fourth section of the decree of 1824, it was not intended to embrace a native Mexican citizen, of which class is the claimant now before the board. In support of this proposition a general review was made of the course pursued by the former government of the country in regard to the discrimination always made in favor of her native citizens in granting of the public domain under the colonization of her provinces. It is very apparent from the examination that the policy of the former governments of the country, in this regard, has been variant at different periods and conjunctures of her affairs, sometimes exhibiting the exclusive rigor of Lacedamonia, in the days of Lycurgus or of the Celestial Empire, and

at others relaxing it so far as almost to abolish all distinction. There does not seem to me to have been, at least since the independence of Mexico, any such fixed and settled policy in this matter as to rely upon it with any confidence as a guide in the interpretation of this decree. It is safer to determine her policy from laws enacted at the given time, than to construe her laws by any supposed general policy upon the subject. An impression might, indeed, be taken up from the first section of the decree, that the only object of the bounty of the government was foreigners—that they were the chief instruments intended to be used for the colonization of the vacant lands of the republic. This would be, however, a very erroneous deduction. In looking at the decree itself, I can perceive no distinction between foreigners and Mexican citizens, except that which is suggested in the 9th section, where in the distribution of lands a preference is required to be given to Mexican citizens, which involves, as I think, a distinction in their favor over the foreigners whose introduction was contemplated. Whatever doubt may exist as to the intention of the legislature, contained in the decree, it all vanishes when we look at the provisions of the ordinance, which is its practical exponent. The first section of the ordinance is a clear, and comprehensive, and authoritative exposition of these prominent and essential matters necessary to the execution of the decree, whose adequate fulfilment the president had just declared his intention to accomplish. The first in his order of announcement is, that the sole and exclusive agent in the function of granting shall be the political chief of the Territory; the second is, that the subject of his grants shall be the vacant lands of his Territory; and the third is, that these grants shall be made to impresarios, families, and individual persons, whether Mexicans or foreigners. Whatever was intended to be granted by the decree I feel bound to believe, with the exception of the preference intended to be granted indifferently to Mexican citizens over foreigners.

The next point which I will consider is, whether the territories of the republic were intended to be embraced in the fourth section of the decree of 1824.

Its application to lands within the prescribed limits situated in the States is evident, but that it was intended to embrace those similarly situated in the Territories is not, I must confess, free from doubt, though such is the inclination of my mind. With regard to the States without such a provision, all power to control the matter would have been parted with. But that consideration does not prove that the generality of the terms should be so restricted as to confine them to such lands within the States. This policy of the withdrawal of her people from contact with, and facility of access to, foreign nations—the neglect of which might involve the nation in a war by border feuds, and being so involved might make her more vulnerable and exposed to maritime incursions along her coast—would seem to apply as well to the Territories as to the States. As to the speculating on the policy and motives of this provision, it is possible that there might have entered

into it one consideration which was peculiar to the Territories. The congress may have supposed that in devoting the whole of her public domain by this permanent decree to gratuitous distribution, she might cut off any aid to her fiscal exigencies in the future from the source of her public domain, and may have thought it wise and prudent to submit to her executive head the economical question whether the highest interests of the republic might not be subserved best by withholding that portion of it for the purpose of sale. But whatever may have operated upon the mind of the Mexican congress, I have come to the conclusion, not, however, with the fullest confidence, that they submitted to the will of their executive the future subjection of that portion of their country, whether in the States or in the Territories, to the process of colonization.

The next, and as it occurs to my mind the most important branch of this question is, whether the federal executive has exercised the power with which he was invested by congress in that section of the decree. It is certain that the mode in which he shall give his required approbation is not prescribed by the law, and I am not prepared to say that any mode which he might adopt, however much it might differ from my own view of its comparative efficacy, to accomplish the end designed, would not be competent to him to select. In view, however, of the mode in which he was required, both by the Acta Constitutiva and the general constitution, when carrying out a general law of the republic, I should think *that* the one which he pursued the most natural one for him to adopt on this occasion. I have already had occasion to state that, both by the Acta Constitutiva and the federal constitution, it was his duty to make ordinances, decrees, and rules for the more exact fulfilment of the general laws of the republic. It seems to me that the federal executive might well have executed the trust reposed in him by the constituent congress of 1824. By a general ordinance the matter confided to him was to determine whether the region of the public domain, contained within the described limits, should be subjected to colonization. That determination, which had been doubtless confided to him by congress from the consideration of his high official station and responsibility to the republic, could not be by him devolved upon another. The power and authority conferred upon him was a high public trust which he could not delegate. But in relation to the process of carrying it into execution by establishing the details of colonization, it was his peculiar duty, and it was just as competent to him to do that in relation to the lands which were devoted by his will to colonization, as to perform the same functions in relation to those so dedicated by the will of congress, as expressed in their decree of 1824. The argument adverse to this, it seems to me, consists in confounding the act of the will of the federal executive, by which he could subject that region to settlement, with the means which he should employ to carry that will into execution. The objection to his mode of carrying out his purpose of settlement, after that purpose had been formed, is more properly a criticism on the fitness of the means which

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he adopted, than an argument against his power to communicate his will by a general ordinance. We may, in reviewing the transaction, suppose that the policy which dictated his investiture with that power would have been better subserved if he had so exercised it as that every individual, before he could be permitted to settle in that tract of country, should present himself personally to the executive and obtain a special permission. But the executive of Mexico may have thought that the public interest required in 1828 could be achieved by a less onerous and less dilatory process. He may have thought that the public security would be sufficiently guarded in the case of individual Mexicans or foreigners, by the ordeal through which he had required them to pass from the first presentation of their petition to the political chief to the ultimate sanction of the executive, which last he has provided in case of a reasonable objection to their pretensions. He may have thought that in an attempt to introduce, through the medium of impresario stipulations, an excessive proportion of foreigners, the check which he had provided of a personal application to himself before the issuance of an irrevocable grant would sufficiently protect the republic from such an inordinate influx. That the federal executive, for aught that I can see in the law of 1824, might have acted in that manner, thus subjecting that region to settlement by the promulgation of his will in a general proclamation; I feel well assured that a much more important question now will demand our consideration, and that is, admitting his competency to do so, whether his ordinance of the 21st of November, 1828, contains that expression of his will. This inquiry we will now proceed to make.

At the threshold of his entrance upon the duty of carrying into execution the general decree of August, 1824, the executive declares in the caption or heading of his ordinance what it is he is about to do; he entitled it, General rules or an ordinance for the colonization of the territories of the Republic; this is transmitted to California and is found among the archives of the Territory. Now this is significant, as to one fact that he proposed to extend the benefit of the decree to California, and yet it is true beyond controversy that the object of the decree could not be effected in this Territory, which was settlement and cultivation to some extent at least by families, except within the ten litoral leagues. If this was the case in 1840, as the record verifies by reference to the statement of Jimeno, how much more was it so in 1828. At that time, from the wild and savage nature of the interior, infested by hordes of hostile Indians, it would have been next to impossible to have introduced cultivation or inhabitancy by families so far from the few towns, the missionary stations, the settlements already established in the Territory and the protecting military presidias, all and every one of which we learn were within the belt of country which is now supposed to have been withheld from colonization. It seems to me that such could not have been the intention of the executive. The very first article of the ordinance, as well as the last, serves to satisfy my mind that he did not intend to exclude it; the first article of the ordinance specifies *that* the

object of the proposed colonization to be the vacant lands of the Territory, and what they were. The decree which he professes to be putting into activity had particularly defined as the lands of the nation which, not being private property nor belonging to any corporation or town, could be settled. The last article leads to the same conclusion as to the intention of the president; that article declares, that the land occupied by the mission should not be colonized; this is a strong negative, pregnant of the affirmative declaration that such of the lands as were pertinent or adjacent to the missions, if not actually occupied by them, might be colonized; and as we have seen, all such were within the ten litoral leagues. Not the most remote allusion is made from which an inference can be drawn to countervail this strong language; if he intended to withhold this section of country from settlement which was known to vest in his exclusive will, he would not, I would think, have been equivocal in his language, much less have used such as conveyed a contrary intention. Nor can we suppose that a matter which constituted so material a portion of the decree which he was carrying out, and of the subject of his action, would have been forgotten by him; and if not forgotten, how easy and natural to have restrained the general authority to grant by adding to the words "vacant lands in your territories," the words except "within the litoral and border leagues." He has not distinguished between the vacant lands which are within and those which are without the supposed lines which divide them. He has used no terms indicating any intention of making any such distinction, and the rule of construction in the Spanish law is "Ubi lex non distinguit, nec nos distinguere 'debensus;'" I repeat then that "vacant lands" in the ordinance must be understood, without any words to distinguish them, to signify the same thing that they do in the decree which it purports to carry out; and what they mean in that decree is declared in the second section to be all those which are not private property, &c. If, however, *if* there be any doubt as to the true meaning of the ordinance, it vanishes when we look at the accompanying facts which are a legitimate ground of determination. The strongest evidence is found in the *in the* contemporaneous understanding and conduct of all concerned in the execution of the decree and ordinance, of the intention to authorize the settlement to proceed within the litoral leagues. The political chiefs and governors who were selected and appointed as agents to carry out his ordinance by the executive, and the territorial deputations, and departmental juntas, who were also to officiate in the execution of his instruction, with one accord have put the same construction on this ordinance. One political chief or governor might have erred in this matter through ignorance or from some improper motive, and so of one body of the deputation or of the junta; but that all should have done so through a long series of years and successions of terms, it is difficult to believe; and the evidence of this construction is heightened to the highest degree of moral and legal certainty by the acquiescence of the executive after we must presume he had knowledge of this construction of his regulations, and never intimating, so far as we can learn, that there was any error in this

uniform course of proceeding. His knowledge of all this is a presumption in law, from the requirement of quarterly returns to be made to him of all the grants that were made, and the facts relating to them. It is not often that we find such a body of contemporaneous exposition of a doubtful law. To countervail this construction of the ordinance of 1828, as deduced from the contemporaneous and continued acts of the officers of the government in the territory, to whom its execution was especially confided by the federal executive, and indeed to establish by the same kind of evidence the opposite construction, the law agent of the United States has introduced from the archives a record of proceedings had before the departmental junta on the 18th of April, 1840, consisting of a proposition submitted to that body, a report of a committee upon it, and their adoption of that report. The object of the proceeding seems to be to procure the confirmation by the general government of the grants of land within the ten (10) litoral leagues, and of mission property, made by the political chiefs and approved by the successive deputations and juntas down to that time, under the law of the 18th of August, 1824, and the ordinance of 1824. This whole proceeding conduces to prove that there was in the minds of that body at that time, to say the least of it, great doubt and anxiety on the subject. It is fair to presume that such was the state of their minds at the time, as there is no ground to believe that anything but honest apprehensions of the insecurity of the land titles of the territory induced their action; but at the same time that it discloses this doubt and feeling of insecurity, it also supplies other facts which outweigh as evidence of the construction of the decree and ordinance the proceedings themselves; they furnish full proof of the fact that the political chiefs, from the commencement of their action under that decree and ordinance in 1834, down to that time, had granted lands by definitive titles within the litoral leagues, and that territorial deputations and departmental juntas had approved of such during the whole of the same period. It proves further, that there were no vacant lands except such as were so situated which could have been colonized, because the said record says it is all litoral, and the greatest part thereof is acknowledged as belonging to the missions. Now the repeated acts of political chiefs or governors, and of the deputations and juntas, in the execution of their duty under the decree and ordinance, in the scale of evidence greatly preponderates this single act of that body, even if their resolutions and preamble had contained the express averment that they did not consider the decree and ordinance as furnishing any authority to make the grants referred to. But I do not understand them as expressly declaring that belief, but they are rather argumentative and deprecatory of the evils of such construction. Furthermore, if what is produced as the answer of the general government to their resolutions is in fact a response to them, which however I can hardly consider as having any connection with them, it proves one of two things: either that the executive of Mexico did not perceive any reason for the apprehension of the departmental junta, or that they were supremely indifferent to the feelings and pros-

perity of the people of California; and the latter we are not justified in imputing to them.

The views and considerations above suggested relate to the construction proper to be placed on the decree and ordinance by virtue of which this grant was made. If I should be wrong in the conclusion to which my mind has arrived, that the decree and ordinance ought now to receive the construction which was put upon them at the time by all concerned in the subject to which they related, and which was acquiesced in so long by the former government, it is then worthy of consideration whether—

First. That approbation of the federal executive may not be presumed to have been given; and secondly, whether even if there were no such application or previous consent, either in fact or in presumption of law, the principles of equity under all the circumstances of this case *as* not require that the claim should not be confirmed; as the first of these propositions is founded on the supposition that the Executive of Mexico could, by a less public but equally competent and effectual mode of communication, have imparted the authority to the political chief—that is by private instructions—which the political chief was not bound to expose. It may not be amiss to bestow some further reflection upon his competency to communicate his consent in that manner. In the argument of the law agent of the United States, the total invalidity of any private instructions is asserted and the position assumed, that even a public antecedent proclamation by the federal executive would not suffice; but that there must be a direct application for that consent in every particular, instead of grant. To sustain this doctrine we were referred to the decisions of the supreme court of the State of Texas, in the 3d volume of the reports of that State. From the fact that the State of Texas composed part of the republic of Mexico, and that her judicial tribunals have had their minds necessarily turned to the questions arising out of the decree of the 18th of August, 1824, much consideration is due to their judicial decisions upon that subject. At the time of the enactment of that decree, Coahuila and Texas, together, formed a State of that republic. In obedience to the 3d section of that decree, that State proceeded to the enactment of a law on the 21st of March, 1825, providing for colonization within her demarcation. By the 7th article of that law she provided, that no settlement should be made within the twenty border leagues, nor within the ten litoral on the Gulf of Mexico; and for that purpose all future petitions on the subject, whether made by Mexicans or foreigners, shall be passed to the supreme government, accompanied by a corresponding report. In the year 1837, that State, by explicit instructions to her commissioners of colonization, forbade them to give possession to any colonist proposing to establish himself within the twenty border or ten litoral leagues, unless he shall present him with a special order from the State government, wherein the approbation thereof of the national government shall be manifested. The result of this State legislation is a palpable requirement that the grantee in each case must produce a

document containing the previous approbation of the federal executive. In that State, beyond all doubt, all grants would be void where the consent was not obtained as the law directed it, and could not be recognised unless proved by the evidence which the law required. There the consent must be special in every case, and no presumption of that consent could be indulged to supply what the law required to be procured and exhibited. The judiciary could not dispense with those positive legal requirements, and hence the decisions in the supreme court of Texas upon those two points, viz: the special application to the federal executive in case of a grant, and upon the doctrine of presumption of that assent by the executive of Mexico. There was no special action required of the federal executive of Mexico in regard to colonization in the States, as there was in regard to the territories by the 16th section of the decree; the course to be pursued by the States was to be one of their own adoption. The federal executive could prescribe no rules for the States as to the mode of carrying out the decree. The State of Coahuila and Texas adopted the mode of obtaining the approbation of the federal executive to colonization within the leagues, by special application in every instance. If Coahuila and Texas, instead of prescribing that mode of proceeding, had, by a resolution of her legislature, requested the Executive of Mexico to give her approbation to the settlement of that portion of the State contained within the border and litoral leagues in the same manner that she should adopt for the colonization of the residue of her demarcation, I cannot doubt but that it would have been entirely competent to the executive to have complied with the request, whether he did so or not; and that a general ordinance, if he had complied, would have been all-sufficient to have given the authority in the meaning of the fourth section of the decree of 1824. I presume that it will be admitted that the national legislature could at any time have repealed the fourth section of the decree of 1824. If she had done so, and instead of subjecting the colonization of that portion of the country to the will of the executive, she had provided that it should not be colonized without the previous consent of that department of the government, I presume that then it would be doubtless competent to congress, by a general resolution to that effect, to have given such approbation. It seems to me that congress, by transferring their power in the matter to the executive, without any restriction upon him as to the manner of exercising it, gave him the right to exercise his best judgment as to the whole subject. Coahuila and Texas never applied for any general authority or approbation, but adopted the course which to her seemed best. The question never rose in that State whether the mode of giving such approbation of the federal executive was in the meaning in the decree of 1824; nor are the decisions of that court applicable to the question upon which I will presently enter, of the presumption of the previous approbation of the federal executive. No presumption could be indulged in of any assent in Texas, because it was expressly provided by her statute that the evidence of that approbation should accompany

the petition of the colonist before he could obtain any right whatever; and one of the grounds upon which the presumption rests, if it can be indulged at all, did not exist in Texas, because the relations existing between the Federal Executive of Mexico and the authority of the State of Coahuila are by no means identical with that which exists between that executive and the political chief of a territory, to which that executive has confided the trust as his and the agent of the government to convey or grant vacant lands lying within it.

It must be conceded that the decree of 1824 required the previous approbation of the federal executive to colonization within the border and litoral leagues. It is equally true, that the officer of the government cannot alienate the public domain of that government without its authority. The question now to be considered is, admitting that such authority must exist, whether or not its existence, in this instance, may be presumed. There cannot be any presumption indulged in of the existence of the authority in a public officer to dispose of the public domain, where the public law regulates not only the manner of conducting the procedure, but also the authority and power of the officer. The case must be brought within the influence of the doctrine laid down by the Supreme Court of the United States in the cases of Arredondo, Clarke, Perchman and others, all of which recognised the same principle. Those cases rest mainly on the power of the King of Spain to grant the public domain as may suit his royal will, &c., upon the presumption that those officers, through whose agency he acts in that matter, will, from their dependence on his favor and the fear of punishment, not venture upon encroaching, without authority, upon the royal prerogative. The whole doctrine is represented in the following words, taken from the decisions above referred to: "A grant made by a governor, if authorized to grant lands in his province, is prima facie evidence that his power was not exceeded." The connexion between the crown and the governor justifies the presumption that he acts according to his orders; should he disobey, then his hopes are blasted and he exposes himself to punishment. His orders are known to himself and those from whom they proceed, but may not be known to the world; and further, he who would controvert a grant executed by the lawful authority, with all the solemnities required by law, takes upon himself the burthen of showing that the officer has transcended the powers conferred upon him, or that the transaction is tainted with fraud.

There concurs between the federal executive of Mexico and the political chief of a territory, and that between the King of Spain and his governor of a province, many points of resemblance so far as this particular matter is concerned, though they are not alike in all respects. The point in which they differ most is perhaps not the one upon which the doctrine was mainly founded by the Supreme Court, and that is the utter dependence of the governor for all his prospects in life to the favor of the government. These facts are common to them both, that during the existence of the decree of 1824 the disposition of the lands granted depended upon the sole will of the federal executive, which

was as free to act as the king on any of his royal domain; that the political chief of a territory had the same general authority, and was the only officer (who did have it) to grant lands that existed in the governor of the king's province; that there was the same unrestrained mode of communication of the will of the federal executive to the disposition of this land in question to the political chief, as between the king and his governor. And it may be that the power of appointment or removal from office of the political chief by the federal executive, was unrestrained by the Mexican constitution, or practice under it; his power seems to have been extensive enough to have formed a strong motive to have obeyed his orders and decrees. The 20th article of the 4th section of the constitution confers a sufficiency of power to assimilate the relative, or perhaps more nearly enough to authorize the application of the doctrine of presumption, so far as it rests on that ground. The power conferred upon the federal executive to carry out the decree of the 18th of August, 1824, by the 16th section thereof, and his general power under the constitution to make ordinances, decrees, and rules for the better fulfilment of the general laws of the republic—his special and limited power to subject the lands within the border and litoral leagues to settlement by his will, with no law to regulate and prescribe the manner of communicating that will or determination of it to the agent that he might appoint, and did appoint, viz., the political chief of the territory, and his power over that officer, who had the sole power of granting the vacant lands of the territory, in case of a departure from his orders—is given in the constitution cited above; all strongly incline my mind to the conclusion, that in the case of a grant made by him, the presumption might well be indulged that he was authorized to make it. As it is not necessary, however, in my view of this case, to decide positively upon that question, I decline to do so. This conducts me in the course of my inquiry, which I propose, to the consideration of the last matter, connected with this question of the litoral leagues, and that is, whether in view of all the matters of fact, and of the Mexican law connected with it, as presented by the record, it would be consistent with the principles of equity to refuse a confirmation of this grant, because of locality in reference to the coast.

The nature of the transaction between the persons soliciting land and the government is in fact, as has been frequently said by the Supreme Court of the United States, a contract, the consideration being in the case now before us the abandonment of his former home or residence, and the cultivation of the land or inhabitancy, for which he petitions. And whether, according to strict definition in our law, it be a technical contract or not, yet after the labor and toil bestowed upon it, and the long and continued residence upon it, preventing necessarily the occupation, and it may be the opportunity of acquiring any other home, the doctrines governing contracts may be very appropriately applied. Viewing the claimant in this light, it seems to me that he may in this case invoke to his aid the principles of equity. He desires to avail himself of the laws of his country to procure a home. He reads

that law and sees clearly laid down the terms and conditions on which his government will grant it. That law contains a promise, that as to a portion of her public domain, although it is not in all events and absolutely withdrawn from settlement, yet it can only be devoted to that object by the previous consent or approbation of the federal executive of the republic, is required to carry out that law into practical effect. He is a native, perhaps, of California, born on the only inhabitable part of the Territory. After the passage of the decree of 1824, he waits with patience for the necessary ordinance or regulations of the executive. At the end of about four years, that ordinance is promulgated; he learns from that what officer is appointed to grant the vacant lands of the Territory; he sees distinctly declared what he is required to do to obtain a portion of that vacant land. With an honest purpose of mind to do all that he is required to perform on his part, he approaches the political chief of the Territory, and submits his application; among other things to be considered by the law is the relative position of the land which he solicits to the coast of the Pacific. The land which he solicits is in that section of country which alone has been redeemed from the savage, and capable of being used as the law requires. He knows that the land is grantable if the federal executive has willed it to be so. The political chief, with all this before him and with information that the land is within the ten litoral leagues, proceeds to make the grant. Is not the grant made by the political chief under such circumstances in fact an affirmative response to the question, "has the approbation of the federal executive been given to the granting of this land?" That question is asked by the grant and answered by the grant. I cannot think that this claimant is chargeable with any violation of law. He must have been considered in this case to have acted in good faith at least. The written laws and published ordinances of the government he may be held bound to know; so the presumption is so far short of the fact in this particular, that both law and equity allow an apology sometimes to be made for not having made their acquaintance. However, in this case there was no violation of any written or published law, so far as I can perceive. The whole law appears to have been known to him, so far as it was accessible to any one. The law of 1824 and the ordinance of 1828 he was bound to know, but there was a fact, that is the authority of the political chief to grant this land, which he had no earthly means of knowing, except from the source from which it would be properly communicated, if it existed. He relies upon that information, takes his grant and proceeds, as the ordinance directs him, to the possession of the land. He hears no more about the matter of the litoral leagues. That government that granted it to him never molests him, nor do I think that she ever would have done so. She was fully advised of this mistake of her officer, if it was one, I suppose, within six months after it occurred, as there is a requirement for a special report of the matter every three months after it transpired. The knowledge of the fact, we may suppose, was at any rate communicated by the departmental junta of California in 1840 I cannot think that in

good conscience the government of Mexico would, after so many years, have driven him from his home for the want of the previous approbation of the federal executive. I feel authorized, in the language of the rule laid down by the Supreme Court of the United States in the case above cited in this opinion, to consider that the conscience of the former government ought to be so affected by this conduct of herself and her officers, to hold the land (if she held it all) as a trustee for the claimant. This rule, by which the Supreme Court touched the conscience of the king, was established under laws which furnished rather a dimmer light by which to hunt for it, than is given to us by the act of the 3d of March, 1851. The old and familar lamp of the principles of equity is not held out, as it were, on one side for us to see by, but is put into our hands to guide and to govern us in the decision of those cases.

Having thus disposed of the litoral league question, and come to the conclusion that a confirmation ought not to be refused on that ground, I will pursue my inquiry into other matters affecting the validity of this claim. If all the objections that have been considered be insufficient to prevent such confirmation, yet, if according to the publicly promulgated ordinance and law prescribing the plan and scheme of disposing of the public domain of the Republic of Mexico, no right or title of any kind ever rested in the claimant, then there is no ground for the application of any equitable considerations, which as the Supreme Court of the United States have applied to the cases of imperfect titles under the former laws of Congress, which have been referred to, nor any ground upon which this board, upon any of the principles or grounds of decision enumerated in the 11th section of the act of 3d of March, 1851, can confirm this claim.

The law agent of the United States contends that such is the condition of this claim when brought to that test. This makes it proper and necessary to proceed to the application of the claim to the ordinance of 1828. The argument is, that by the just construction of the ordinance there was necessary to the existence of any right or title whatever in the petitioner a previous consent of the territorial deputation, and that, as there is no evidence introduced in the case of any such previous consent, *that* there is no ground upon which the claim can be confirmed. The same process of reasoning may be pursued in the consideration of this question as was adopted in regard to the construction of the decree of 1824, as to the requirement of the previous approbation of the federal executive to the colonization of the lands within the litoral leagues. That is, we should endeavor first to arrive at the meaning of the ordinance by the provisions themselves which it contains, and if they are doubtful, then we may recur to the usage and practice which was adopted and pursued by all the officers of the government who were charged with the execution of the ordinance. In such a case it is the well settled maxim of Spanish law, "optima legum interpres est consultado;" and to this may be added, as of great force in the construction, that the government whose ordinance it was, fully

informed that such was the construction and practice of the officers in its execution, and that no objection was made, or correction ever attempted, of the supposed error. The proof in this cause is abundant, that the course of practice by all the political chiefs who ever granted lands in California to execute complete grants or titles to the petitioners, and to declare them to the party before to the territorial deputation or the departmental junta for their approval, and if there any exceptions to the rule, they are so rare that they only serve to prove the general rule; it is also as fully proved in this case, that the Government was well informed of this course of practice by all his officers or political chiefs. My own impression is, that this practice was in conformity with the *practice* ordinance in this respect. But there cannot be any doubt, I think, that whether the ordinance contemplates the execution of the full title by the political chief or not, before he was required to obtain their approbation, or rather submit it to them for their consentiments, there was to be in existence a right or title, though an imperfect one, before the submission of the matter to that body, which last would be sufficient to authorize a confirmation, according to the act of the 3d of March, 1851, if it were valid according to the tests to be applied to it by that law. In considering this question of the approval of the territorial deputation or departmental junta, it must always be borne in mind that the whole undivided power and authority to make grants was vested by the ordinance in the political chief. There is no participation with him in the exercise of that power in any body else. "The political chiefs of the territories are authorized to grant lands," &c.; all the prerequisites to the exercise of that function by him are enumerated in the 2d article of the ordinance. Immediately after the presentation of the petition, as required in the 2d article, he shall proceed directly to obtain the necessary information whether there is in the petition the requirements demanded by the law of 18th August, 1824, both as respects the petitioner and the land which he solicits; and that he may rely upon his own judgment, and act upon it alone, or if he prefers to do so he may consult at the same time with the respective municipal authorities, to whether there be any objections to the grant; the next article is that in view of the whole, the political chief will or not accede to the prayer of the petitioner, conforming his conduct exactly to the laws applicable to the matter, and especially to the one above named of the 18th of August, 1824; then follows the section which most particularly refers to the point under consideration. It reads thus: "The grants made to private individuals or families shall not be considered definitely binding or valid without the previous consent of the territorial deputation, to which end there will be passed to it the respective expedientes." As we have seen that no share of the function of granting is devolved by the ordinance upon the legislature, their consent must necessarily be to what has been done in that particular; that he should have done something in the contemplation of this section towards a grant must necessarily be conceded, even though it should not have amounted

to the execution of a perfect title. That he should have acceded to the petition, which was for a grant of the land sought, is expressly required; and that there was at least a concession to that extent is a necessary deduction. To limit the word concession to that point in his action would result in the same end, for there then would be an inceptive title whose *whose* effect would only be qualified, but not defeated, by their refusal, and that qualification was only to retain it in the condition it then was until the final action of the federal executive. To say that what the political chief had done should not be definitely valid without the approbation of the deputation, is the admission of a validity that it may be short of irrevocability; and in that construction there would be an imperfect right or title, which if never destroyed under the former government, *which* might now, if in all other respects be unexceptional, be the subject of confirmation by the board. But my impression is that after the necessary qualities were ascertained by the granting power to exist in the land sought, and the petitioner, that he might under the ordinance proceed to the making, signing and delivery of the title. The 8th article proceeds: "The concession which is asked for being definitely made, there shall be executed a document signed by the political chief, which shall serve as a title to the party, expressing in it that it shall be understood to be in conformity to the laws, in virtue of which he may proceed to the possession. This definite action of the political chief in consummation of the title refers to the initiatory steps which, by the preceding or 3d article, he had been required to take in the same manner; and does not, as I think, by any fair construction, refer to anything else. That concession which is the only document that he is ever supposed or required to make, was the same which was not held to be definitely valid without the previous consent of the territorial deputation; all the force must be given to the provision requiring the previous consent of the deputation which the ordinance imparts to it. If prior to that consent there was no right or title conferred by the political chief, his act afterwards was to be merely a ministerial duty; the whole purpose of the ordinance would be reversed, and the granting power would in effect devolve upon the territorial deputation.

By the construction of the ordinance which it seems has always been adopted, the effect of the consent was to place the concession or grant beyond the supervisal of the federal executive, and its refusal to consent was not to annul the grant, but to cause its submission to the action of the federal executive, which might or not result in its annihilation. The consent of the deputation did not alter the nature and character of the grant, nor could their refusal destroy it; it remained as the granting power had made it. Now every object which it seems to me was intended to be accomplished by the submission of the matter to the deputation, has been accomplished by the course pursued by the political chief in this case. He has made the definite title, expressing in its body that it is made subject to the action of the territorial deputation as prescribed by the ordinance. The only question here is, whether the failure of the political chief to obtain the consent of the deputation

is now to be held as destructive of the force and effect of a perfect grant made subject to it; that this grant made prior to the submission of the matter to the deputation was a perfect and complete grant of the fee, there is no doubt; it conforms exactly with the mode of a complete grant under the Spanish law, as furnished by the Supreme Court of the United States in the case of Menard's heirs vs. Massey, reported in 8th Howard, 315. The insertion of conditions are common to them both. It often occurs that conditions subsequent are inserted by the terms of the contract between the parties, but they are entirely consistent with a full investiture of the grantee of the entire estate in fee; in one sense of the word, those conveyances are not definitely valid, that is, they carry on their face and bear about them the means by which they may be destroyed. That an estate in fee simple may be granted on conditions, see Greenleaf's Cruize, 1st volume, 59; and further, a condition indeed may be annexed to every species of estate and interest in real property, to an estate in fee entail for life or years in any lands or tenements; ib. Title 13, Estates on Con., Chap. 13th, page 2.

The right of the claimant must be tested by this grant as it is. I do not think that it was made by the political chief prematurely in order of time. Whether made prematurely or not is a question of the construction of the ordinance, and I think that the construction which has been put upon it is right, and furthermore, if it be not right, the consequences must be borne by the grantor, the government, and not by the grantee. The grant is not void, but must stand as it is, although in contemplation of the ordinance the full and complete title was not intended to be made until after the action of the territorial deputation. More especially should it be so held after the long usage of that mode of granting under the ordinance with the knowledge of the federal government, as we are bound to presume from the evidence on the record in this case. The fact of the authority, and the sole authority of making grants, being vested in the political chiefs, once established, no grant executed by him can be held void for irregularity in the manner of executing that trust, though it may result in making the consent of the territorial deputation a quasi condition subsequent instead of precedent to the grant. Here was an authority in the grantor to grant, and to grant the very lands; or in other words, the lands were grantable, and he fully authorized to grant them; but he has misapprehended (honestly if at all) the course to be pursued in carrying out his conceded power, in the point whether he could not proceed to make the grant, after ascertaining the matters entiuling the petitioners to it, and then submit it to the deputation, or submit it first to the deputation and then execute the grant. The political chief has not usurped any authority conferred upon the deputation by his course. He expressly subjects his action to their approbation. It is a case at most of irregularity in carrying out *his* an ordinance prescribing his duty, and a grant thus made ought not to be avoided for a departure from its directory injunctions, *were* in a case where the consequences resulting from the departure would be much more serious and impertinent than the total

neglect, under the decree of 1824, to have submitted his action at all to the review of the territorial deputation.

The Supreme Court of the United States, in the 5th Wheat., 239, lay down a rule which I think applicable to this case. They say that as to irregularities committed by officers of the government prior to the grant, they do not doubt but that the government and not the individual must bear the consequences. And in 11th Wheatley, 380, they say it would be extremely unreasonable to avoid a grant for irregularities in the conduct of those who are appointed by the government to supervise the progressive course of a *a* title from its commencement to its consummation in a patent. My opinion is that this is a perfect title, subject only to the effect declared in the ordinance, as consequent upon the failure of the political chief to obtain the consent of the territorial deputation, and to the conditions that are lawfully annexed to the grant.

The grant being definitely made and delivered to the claimant, as the decree contemplates it should be, he had nothing to do further than to perform the conditions lawfully attached to his grant, and which were to be performed by him. If the grant was not annulled by some action to be had upon it according to the ordinance by others than himself, it remained as it was delivered to him, a perfect and complete title. No such action did take place during the existence of the former government. The consequences of the failure of the governor to obtain the approbation or consent of the deputation, we have seen, did not annul the grant, but was only to be followed by a reference of the matter to the federal executive. No such reference was ever made, nor indeed was there ever any final action upon it by the deputation. There was no time limited for their action, and we have no doubt that they would finally have approved of it, as the only objection made to the adoption of a report by their committee of entire approval was an evident error in the form of that report. I can see no reason why the territorial deputation should not have approved of the claimant's grant. I believe it is substantially approved, and as its neglect was no fault of the claimant, I do not think we ought in equity and in good conscience to refuse him a confirmation of his title.

Having considered thus far the grounds of objection or difficulties which presented themselves to a confirmation of this title, and not having seen any fatal defects, we will proceed to examine whether any objections affecting its validity can be predicated of the non-performance of any of the conditions attached to it. I will remark here, that as to several of these conditions, I do not find any authority for their imposition in the decree of 1824, nor in the ordinance of 1828. But as the political chief is required in the ordinance to conform to the laws regulating the matter, as well as to the decree of 18th August, 1824, and the ordinance of 1828, I am not prepared to say that they are imposed without authority. The presumption is that he did conform to the laws. The conditions not to obstruct the roads, highways, crossings and right of way, and to build a house and live in it within a year,

and to put on the limits of his land, besides the land-marks, some fruit trees or forest trees of some utility, seem to have been taken from the regulations of Don Felipe de Nevi, dated in June, 1779, and approved by his Catholic majesty in a royal order of the 24th October, 1781. In the 9th section of those regulations we find it provided that the new colonist shall be free and exempt from paying tithes or any other tax on the fruits and products of the lands and cattle given to them, provided that within a year the house-lots and parcels of land be designated to them, they build a house in the best way they can and live therein, open the necessary trenches for watering their land, placing at their boundaries instead of land-marks some fruit trees or wild ones of some utility, at the rate of ten to each suerte of land. App. No. 2 of Capt. Halleck's report, Sen. doc. No. 17, page 136. If this was the law, by authority of which these conditions were inserted in this grant, however suitable to urban grants, they seem to me to be out of place in the large rural grant to this claimant; and instead of the comparatively mild penalty of paying tithes and taxes if he fails, the most disproportionate penalty of losing his whole land is affixed in this grant; which however we may safely conclude would never have been enforced by his government.

Without questioning any further the power of the political chief to insert the conditions which he has put in the grant, I will proceed to the more important consideration of the questions which arise out of this feature of the case. The conditions annexed to the grant are numbered to the extent of five, though the last so numbered is not in fact a condition, but a clause of forfeiture, declaring "should he (the grantee) violate these conditions he shall lose his right to the land, and it may be denounced by another." I have no doubt that the conditions in this grant under any interpretation which the ordinance of 1828 or the decree of 1824 can bear, are all subsequent conditions, for it cannot be supposed that the execution and delivery of the definitely title spoken of in the 8th article of the ordinance was to be longer delayed than the consent of the deputation; and besides, the conditions are of matters in their nature subsequent to that time. It will be observed that some of the conditions are negative in their character and some active or positive, and one of them at least a mere recital or descriptive allegation of what was already done, which is not strictly a condition, as that must necessarily relate to the future. Of those which are affirmative and active, some are to be performed by the grantee himself, and others by an officer of the government at his instance. With regard to any failure or imperfection in the performance of any of them which the grantee is not required to perform, he ought not, whatever else he may suffer from that failure or imperfection, to be subjected on account thereof to the forfeiture prescribed in the penal clause. It would only be by a reversal of the lenient laws applicable to the construction of penal clauses that he could be visited with the defaults of a public officer whose action the government required him to solicit. The penal clause is, "If he shall violate these conditions he shall lose

his right," &c. Surely he will not be held to the penalty for the violation of conditions which he was not required to perform, and the execution of which he could not control. So far as there appears to be any violation of the conditions which the grantee was required to perform, I have no doubt that the failure is of such a nature and character which ought not to be visited with the penalty of the loss of his title. The only neglect or violation of a matter material to the grant relates to the time of building the house and living in it.

The actual occupation and the judicial possession and measurement, the building of the house and his residence in it, all took place many years before the acquisition of the country by the United States; and to inflict the penalty now for the difference of time between the requirement and actual performance would seem to me to be entirely too disproportionate and vindictive to be sanctioned by the laws of Mexico or by the principles of equity; the imperfect manner of executing, or departure from the laws and ordinances regulating the discharge of the duty of measuring this land, which, by the condition of the grant, he was required to procure to be performed, is, according to my view of the penal clause, no ground for inflicting its force upon the grantee, and will not be considered by me except in connection with another objection, which is that to the validity of the claim, which is for want of a sufficient segregration of the land from the remainder of the vacant lands of Mexico. This view of the question, as to the effect of the conditions in this grant upon its validity, taken in connection with the proof in the record, might suffice, perhaps, on this branch of the case; but there are other views which I feel*ed* called upon to take of this matter, of the subsequent conditions in the grant. This grant is, in its construction as to its character, and as to the effect of the breach of the conditions annexed to it, *is* to be tested by the law of Mexico. We have already seen that it was, in its form and structure, a complete conveyance of the fee-simple title. We are now to consider what is the effect, under the Mexican law, upon the rights of the party of a breach of the conditions which are annexed to it. The entire fee being invested in the grantee, the first question which arises is, whether upon a failure, or on a breach on an annexed condition, that vested title was thereupon ipso facto divested out of the grantee and re-vested in the government without any thing done on the part of the government to manifest her will to take advantage of the forfeiture. This is a very essential consideration; for if the land in this grant did not re-vest in the former government, but required some action or procedure of some kind to produce that result, which proceeding was never had under the former government, the United States did not acquire the land under the treaty of Guadaloupe Hidalgo, but at most a mere naked right to enforce a forfeiture which belonged to the former government. The distinction must never be lost sight of in distinguishing this question between conditions which were to be performed before the perfect right by a grant of the fee was to be vested in the party, being what we term in our law conditions precedent, which, not being performed, would

leave the fee in the former government, and thus, under the treaty, would devolve upon the United States to be dealt with as she might direct; and those conditions which, according to our nomenclature, are called conditions subsequent, which attach to a complete grant of the fee and have such effect, if violated, as the law of Mexico prescribes. I will revert for a moment to a view of this subject as it is regarded in those governments whose principles we are more familiar with than we are with those of Mexico, and by which the government of the United States, both by its legislature and judicial departments, has always manifested a strong inclination to be governed when adjusting questions of private right between herself and her own citizens. The rule in this country upon the subject is laid down with so much brevity, and yet with such comprehensiveness, in a note to the text of Cruize on Real Property, as edited by Mr. Greenleaf, that I will quote it at large: "A condition is something inserted for the benefit of the grantor, giving him the power, on default of performance, to destroy the estate if he will, and reinvest it in himself for his heirs. As the law does not presume forfeitures, it requires some express act of the grantor as evidence of the intentions to reclaim the estate, viz: an entry." 1st Greenleaf's Cruize, page 46, of tit. 8. The doctrine of the English common law on this subject, except where varied by special legislation, is adopted generally in this country. That doctrine, even in grants by the Crown of England, is thus laid down by Cruize, ib. 40: "In all cases where the crown is entitled to land on the breach of a condition, an appeal countervails an entry," citing Row'd, 243, The People vs. Brown, 4th Caines, 416, 426. In the State of Tennessee, which had a large portion of public lands for distribution, the doctrine with regard to grants by the State is, that even a grant which is void by fraud must be adjudged so by some *by some* process of law before the State can reclaim it; 4 Cond. U. S. Reports, 657; and that a grant by breach of conditions subsequent is not void but only voidable; U. S. Dig., vol. 1st, 472; 1st Dralon's Ten'see Rept's, 370.

I will now advert to the doctrine of the civil law upon that subject, which corresponds in a remarkable degree with those of our equity. I am of the opinion that the doctrines which are applicable in this particular to private grants or conveyances ought to be equally so to public grants, and that, when brought before a judicial tribunal, where then the nature of the grant is the same, and more especially where its features are identical, the same rule of decision should apply. There are rules which are peculiar in their application to grants by a sovereign, which are not involved in the considerations of the force and effect of these conditions; such as, for example, that in grants by a sovereign, nothing should be taken by implication, and that in their construction they shall be taken most strongly for the sovereign, whereas, in private grants, the rule is that they shall be taken most strongly against the grantor and in favor of the grantee. But where the question is not one as to the meaning and intent, but as to the effect of unambiguous stipulations, such as conditions whose significa-

tion is apparent, the same rules should govern, no matter whom the parties. The Supreme Court of the United States have held, in an opinion delivered by Judge Marshall, that the King of Spain was bound by the fundamental laws of his kingdom. It is needless to remark that the government is bound by the same municipal laws which prevailed before her independence, except so far as they are inconsistent with her present form of government and have been changed by her own decrees. In the Partidas I find the doctrine asserted without qualification, that the king is bound by the laws of the kingdom, though he made them, just as a subject is bound by them; 1st Part., tit. 1st, law 14; so also in Novas Recap., vol. 1st., tit. 2, fol. 3, it is declared that the laws must be kept as well by the king as the people. Those doctrines of the civil law to which I shall make reference are as follows: "Clauses of nullity and penal clauses are not always executed to the rigor, and covenants are not dissolved, nor penalties incurred in the moment which the condition bears, even although it should be agreed upon that the contract should be void by the bare deed and without any ministerial act of justice. But these sorts of clauses have their effect regulated by the discretion of the judge according to the nature of the covenant and the circumstances;" 1st Stass Doneat, page 185, art. 222. If the condition depend wholly or in part on the act of one of the contractors, and he has not satisfied it within the time, it is understood that, in the cases where it would be equitable to grant delay, it ought to be granted according to the circumstances, as when the delay has occasioned no damages, or if there is any, where it can be repaired; Ib., page 184, art. 218. In all covenants in which one of the covenanters is obliged to do or give a thing, or to accomplish in any other manner that which is agreed upon, and especially in those in which the non-performance is to be attended with a dissolution of the contract or with some other penalty, it is equitable and for the public interests that the covenants be not immediately dissolved nor the penalty incurred for every sort of non-performance indifferently; Ib., page 177, art. 196. Although a covenant proves to be null, yet he who complains of it cannot restore himself to his own right unless the other party consents to it, but he must have recourse to the authority of justice, whether it be to get the nullity declared by a sentence, and himself reinstated in his right, or to get the sentence of the court put into execution in case it should meet with opposition; page 291, sect. 240. When a covenant is not dissolved by common consent, the party who complains cannot molest the other, but he ought to have recourse to justice to get the covenant declared void and the sentence of the judge put into execution; Ib., 196, art. 14. These extracts are very explicit, and place the whole matter of the effect of conditions and their breach, and of penal clauses and forfeitures, upon grounds which recommend themselves to the conscience and sense of justice of every one, and, moreover, are the foundations of our equity system on the same heads. It is laid down explicitly in Novisa Recap'n, Book 3, tit. 5, law 1, that what the king has once granted to any one he cannot take away

without fault, (sine culpa.) The important question is, how that fault is to be ascertained and the sovereign will to enforce it be manifested.

I have no doubt that in the administration of the different branches of public affairs, somewhat different modes were adopted to enforce penalties and forfeitures. There were public denunciadores, known officers, and there were secret denouncers, who, like plaintiffs in our qui tam actions, were the instruments of nudating the violated laws and of enforcing the penalties attached to their breach. The last part of the penal clause in this deed alludes most distinctly to such process in case of the breach of any of the conditions by the claimant. It says "that in case he violates the conditions he shall lose his right to the land, and it may be denounced by another." Now, if may means must, which would be the case in a decree of the same sort, there would not be any difficulty in the case; but it is possible that this is a mere privilege to others, and is a cumulative proceeding not exclusive of any on the part of the government, or decisive of the question whether the title does not revert ipso facto upon the happening of a breach. An interesting case has been recently decided by the supreme court of Texas, Hancock vs. McKinney, November term, 1851. That decision was on a complete Mexican title or grant like this, with conditions annexed; but the terms in the clause of forfeiture not expressly refer to the process of denouncement by another, yet that mode of ascertaining the facts of breach of the conditions referred to in the decision as an established course of procedure. The case is not, however, conclusive of the question whether it was or not the only means by which the title of the grantee could be impeached, or whether any inquisition of any sort were necessary to reinvest the title in the government. The language of the court upon that subject is, "It is certain that down to the period of the commencement of the revolution it would have been competent for any person entitled to land to have denounced any land that he might wish to appropriate to himself; and if in the process of perfecting his title, it should appear that the land that he wished to appropriate had been already granted or conceded, the inquiry would be made if it had been forfeited for the non-performance of conditions, or from any other cause; and whether the denouncer should have his title or not, depended upon the result of the inquiry whether such forfeiture had occurred or not. I have remarked that this is not conclusive, that of the point, but from the general doctrines of the Mexican law to which I have adverted, from the mention made of this mode of procedure in the penal clause of this grant, and from the fact as disclosed in the opinions of the court in the case from Texas, that no re-grant would be made upon the mere allegation of forfeiture, but that it must be established by an inquisition, I am brought to the conclusion that there was not in fact a re-investiture of the fee simple title in the Mexican government of the land non-claimed at the time the United States acquired the country, and that this government only acquired by the treaty, if anything, a mere right of the former sovereign to enforce a forfeiture.

There have no cases been brought before the Supreme Court of the United States under the former treaties and acts of Congress, which furnished occasion or necessity for any express opinion on the subject I am now considering. In the case of the United States vs. Sibbald, in 19th Peters, 321, the court use this language: It is unnecessary to decide whether by the acts which authorize the courts of Missouri and Florida to decide upon claims to lands therein, Congress intended to assert a right of forfeiture for conditions broken, to lands which had been once legally granted, and it may well be doubted whether it would have been reannexed to the royal domain had the province remained under the dominion of the king of Spain; nor is there any provision of any law of Congress which specially provides that the court inquire into the performance of conditions on which grants were made. The case in which it has been held by the Supreme Court of the United States, that this government could, or at least would, take advantage of forfeitures which had occurred under the former government, were such as were considered by the court to have been in that category in which no title in fee had vested in the claimant, and that by the stringent force of the ordinances under which they issued they were utterly void ab initio, and to be considered as never having been given at all; that the conditions were precedent, and their performance expressly required before the concessions were to have any effect. Of that class of cases are The United States vs. Kingsley, 12 Peters, 476; The United States vs. Wiggins, 14th Peters, 334. In the absence of any express authority of the supreme court, I do not feel at under the terms of the act of 3d March, 1851, to decide that we have no authority to declare a forfeiture of complete titles by the non-performance of conditions subsequent. In this case the result of the inquiry has been satisfactory to my mind, that the claim ought not to be rejected for the want of any compliance with those conditions under the Spanish law, and more especially under the application to all the facts disclosed by the record of the principles of equity.

The only remaining question arising in the consideration of the validity of the claim in this case is, whether the land granted can be considered as having ever been or is now being capable of being severed from the public domain, in virtue of what has been done in regard to it by the authority of the Mexican government. If anything more is intended by or embraced in the requirement of a severance of the land granted from the mass of the public domain, than the obvious requirement which inheres in every grant or deed, from the very nature of things, viz: that there must be something granted which can be distinguished from other things of the same sort, it must be derived from the positive laws and ordinances of the government where the grant is executed. The general doctrine of universal application is plainly stated by Judge Marshall in 5th Wheat., 359, 4 Cond. 682, in the following words: "It is essential to the validity of a grant that the thing granted should be so described as to be capable of being distinguished from other things of the same kind. But it is not necessary that the

grant itself should contain such a description as without the aid of extreme testimony to ascertain what is conveyed. In applying this rule we should observe what is the intention of the grantor to the thing granted. Where the intention is to grant a special thing, as a house, or town lot, the house or town lot must be so described in the deed as to identify it, or by reference to something by which it can be done. But when the grant only intends to be of a certain number or quantity of an understood and defined nature of things, then that number or quantity is the matter to which the rule will specially apply, and that number or quantity must *specially apply, and that number or quantity must* be so certain as to distinguish it from another number or quantity. But all the certainty above that is of the genus orspecies of the thing of which that certain number or quantity is predicated, and the further identification or specification of the thing is to be determined in a mode agreed upon or it may be established by means provided by law. It may be by the selection ad libitum of the grantee or the grantor, or as is usual in grants of land by a sovereign, by the public officer called the surveyor, and where the thing is to be selected and specified by a public officer appointed by the government for the grantee to perform that office, his omission or fault does not vacate the grant; 5th Munroe's Reports, 159. This distinction is palpable and cannot be better illustrated than by a case adjudicated in 1st Howard, 24. There was a concession upon the petition of a party stating that he was ignorant of the public lands that were vacant, and desirous to avoid interference and dissension with any person, he further prayed his excellency to grant them at places where the surveyor general might survey them as vacant lands. Here was a segregation of nothing but the number 8000 from the infinite extent of numbers, any identification of a specific tract or parcel of land being expressly excluded; the grant was made accordingly of the 8000 acres of land, and the surveyor general ordered to survey for the grantee that amount of vacant lands without injury to other persons, and this claim was confirmed by the Supreme Court of the United States. Judge Catron, in delivering the opinion of the court, states as one of the grounds of opinion taken on part of the United States to the confirmation, that there is no description whatever in the pretended grant of the lands alleged to be granted, and no valid survey could be made so as to cover any lands from the public domain. He proceeded to answer the objection, and says, although there is no description of any place where the land granted shall be located in the governor's decree, still it was so binding so far as it went. The surveyor general was ordered to survey the land solicited in places vacant and without injury to third persons. The acts of the subordinate officer come in aid of the decree, &c. This proves what indeed needed no authority to establish, that a grant may be good though of no specific thing which is ascertained in the mind at the time of granting.

But the thing of which the quantity or number is predicated, is the object of the grantee to acquire and of the grantor to give; all else that is in the grant is moonshine. But for that, now this primary object of

getting the thing into possession for use and enjoyment is to be attained in cases of public grants, as I remarked above, is usually through the instrumentality of officers of the government! This appropriation of the specific thing or separation of it from the mass in which it lies confounded, is in every government of public policy which relates to herself. The government desires to know, for her own interests and convenience, what is left to her after that granted quantity is taken out, and where it is, so that she may know what she has to give to others, and that others may know what to solicit. It is the duty, or rather it is wise policy in every government having lands to dispose of, to adopt such a mode or procedure of identification of what she grants, as will best subserve her own and the public convenience and interest. But it is a matter which concerns herself and her own citizens alone. She may regulate it according to her own views of policy, in which she is generally determined by the means and conveniences which she may be able to command, and is often influenced by the peculiar condition of the country or province, and the pursuits, whether agricultural or pastoral, of the inhabitants of it; whatever plan or course she may adopt, is all-sufficient to bind her and her own citizens, and should also bind those who afterwards succeed to her rights and obligations. The Supreme Court of the United States have expressly recognised this view of the subject. In deciding upon the cases where land is granted, or attempted to be granted specifically, and not a mere number of acres or quantity of land to be identified by the party thereafter, either at his election or by a public officer, they have laid down the rule upon this subject expressly with reference to the laws and ordinances of the country making the grant. They say, where the grants, even by a liberal construction, contain no points by which the lands can be identified, the grants must, for vagueness and uncertainty, be held void. The court have not been influenced in this conclusion by any of the common-law rules which make grants void for uncertainty—such, for example: if the king grant land in a peat waste, without ascertaining what part, or the special name of the land, or how bounded, the grant is void for uncertainty; and yet if an individual so grant, it would be good. They have only applied the laws and ordinances of the government under which those claims are derived, and required that the thing granted be so described as to be capable of being distinguished from other things of the same kind, or be capable of being ascertained by extraneous testimony—15th Peters, 215; so in 11th Howard, 127, the court say these conclusions are in strict accordance with the numerous decisions of this court, which insist on the severance of the property claimed from the public domain, either by actual survey or by some ascertained limits or mode of separation recognised by a competent authority. In view of these principles we will examine, for a moment, the plan or system of granting adopted by the Mexican republic, by the ordinance of the 21st November, 1828, carrying out the general decree of 18th August, 1824, under which the grant, in this case, was

made. This mode of disposing of the public domain by the republic of Mexico was unlike that which had been pursued by the Spanish government in the provinces of Louisiana and Florida, and indeed unlike that pursued in most countries with whose practice, in that particular, we are most familiarly acquainted. In all those countries the general course has been, upon the petition being presented by the party or application made in some mode by any one desiring to obtain land, for the purpose of furnishing the necessary certainty of description and of separating the land from that which is not granted, to direct a survey to be made by sworn officers or surveyors, using the implements and apparatus necessary to do the work upon the ground, and afterwards to plat it upon paper. This description of the land, being thus made by a survey, is transferred into the grant. It consists of courses and distances run by the surveyor, and of stakes or marked trees or other natural objects, which ascertain the very land which was actually surveyed. But in California there was no such means provided by the government for that purpose; and yet the public policy and the interest of the republic required the advancement of settlement and cultivation in this region of her vast dominion. The government proceeded to do this, foregoing the convenience which her more regular and usual course might have attained in the matter of segregation of the land granted from the residue of her public domain. In this unprovided condition of the country, she adopted the plan of granting requiring the applicant to present to the political chief a petition, as appears in the 4th art. of the ordinance of 1828, stating with particularity all that related to the person of the applicant, marking likewise, with distinctness that may be (possible,) and describing in a map or (design) the land which he solicited. That map or plan, which was a rude sketch, and with no scales of distance, with no accuracy as to courses, was generally drawn, as it would seem, by the finger or some blunt instrument, and the lines colored with the juice of berries or charcoal, or some other coloring substance. It contained always notable natural objects, with which the country abounds; and generally, if not invariably, gave a name to the place or tract solicited, which if not then notorious, soon became so, and generally retains it still, stating the supposed quantity in leagues within the natural monuments of rivers, hills, the sea, the sierras, or some remarkable ravine or promontory of that coast-range of mountains. That description went into the grant instead of a survey, and designated the locus in quo the granted leagues were to be contained; sometimes the grant was by those metes and bounds, and sometimes of a number of leagues within them. After the grant was made, the party, in the language of the ordinance, "was to proceed to the possession." This grant contains conditions also which relate, as we have seen, to a possession and to a measurement of the land, according to the ordinance, which measurement was of the nature and kind exhibited in the record of this case. Such was and is the mode of segregation in this case, as provided for, authorized, recognised and acknowledged by the government of Mexico in Califor-

nia. As to any survey in the legal sense of that word, as understood and practised in the provinces of Louisiana and Florida, and generally elsewhere, under the superintendence of a surveyor general, such a thing was not contemplated or exacted. To have required it, would have been like the Egyptian exaction of the captive Ieiro, "to make bricks without straw." There never was, that we can hear of, an officer holding the place of a surveyor under the former governments of California. The neighboring justice of the peace or alcalde, who was required to officiate in that capacity, was not qualified to do more than to put the party upon the land and to make an attempt to measure it, which, with no compass but the sun, and a riata for a chain, was of course very short of the accuracy of the same process conducted according to Galven or to Gunter. It was all, however, that the government had provided means for, and was all that she required or expected. It was conducted with the observance of all due form and ceremony, and in one of its rites is almost identical with the livery of seizin of our Saxon ancestors. The grantee was required to pluck turf or break twigs from the trees or shrubbery on the ground, or to pick up rocks, and, in token of his full ownership, to throw them to the four winds. The proceedings on the ground were all reduced to writing and deposited by the magistrate in the archives, where they are now found, with as much care and fidelity as a navigator would render up the chart of his voyage of discovery to the board of admiralty or to the Secretary of the Navy. Nor was all this a mere idle mockery. The result of this mode of judicial possession and measurement, resorted to from necessity, as it would seem, has been to identify the spot and to lead us to it with almost unerring certainty. In this case the lines were pursued on three sides of the tract, the record stating, with particularity, the progress of the measurement; it does not appear that they did more, but closed the operation by vesta ajos, or a survey with the eyes. A deposition of a witness, referred to in the case of Boisdoré, in 11th Howard, who was a regular surveyor, states, that in all his experience he had never met with a Spanish survey which enclosed every side of the tract. Even the surveyor general of Louisiana seemed to think that the purpose of the government was accomplished by that, and doubtless it was a sufficient identification. I do not think if there any such monuments in existence as the grant calls for, that the surveyor could miss his way to the place.

The government of Mexico, I feel some assurance, would never have turned the claimant out of doors from off the land where her officers had put him, on the pretext that the land could not be ascertained. She could not in good faith have done so, and I think that this government ought not to deal more rigorously with him than that. Her policy was satisfied by what was done by the separation of the land granted from the residue of her vacant lands, and I entertain no doubt that, in making the survey of this country according to the perfect system that the Government of the United States has adopted, that there will never be insurmountable difficulty in locating the claim of Cruz Cervantes.

Guided by the map or deseno referred to in the grant, and forming a part of the monument of title by the possession which has continued from the day at least when he was formally installed in it, to the present time, within the monuments described in the grant, a surveyor can now without difficulty find not only where the land lies, but, by the aid of the recorded measurement of his less accomplished predecessor, he might find the beginning, and at any rate he will be furnished with abundant means to make one. In conclusion, from a full view of the whole case, I think that the claim of Cruz Cervantes is valid.

(Signed) HARRY J. THORNTON,
Comm'r, &c.

August 3d, 1851.

Claim of Cruz Cervantes, No. 56.

Opinion delivered by Commissioner Hall in making the decree of final confirmation.

When the opinion of the board on the principal legal points involved in the claimant's title was delivered by my colleague on the 3d of August last, the entry of a final decree of confirmation was suspended. At that time it was a matter of doubt in which district of California the land was situated, rendering it uncertain to what district attorney, under the 8th section of the act of March 3rd. 1851, our decision, with the reasons for it, should be certified. There was also a bill then pending before Congress for a change of the law in that respect, and requiring our opinions to be certified to the Attorney General in lieu of the district attorney, which we had strong reasons to believe either had been or would be passed before the close of the session then about to be terminated. In this state of uncertainty in regard to the proper officer to whom our decisions should be reported, final confirmations were also suspended in three other cases in which opinions were given previous to the 16th of August, at which time our labors at this place ceased, in consequence of an order from the President for us to hold a session of the board at Los Angelos. This uncertainty in regard to the actual state of the law applicable to the certificates of our decision continued until the receipt of the new act of Congress on the subject towards the middle of October, since which time it is well known to have been impracticable for the board to take up the subject until our organization again at this place on Monday of the present week.

There was also in August last a difference of opinion between my two associates in regard to the propriety of making final decisions of confirmations without previous survey of the land, which question I was unwilling at that time unnecessarily to pass upon. It is now, however, proper to dispose of it, and as the question is one of importance, I shall state, as briefly as I can, the views I am inclined to take of it.

By the instructions of the Commissioner of the Land Office to this board, dated September 11th, 1851, approved by the Secretary of the

Interior, it appears to have been contemplated that preliminary surveys should be required by the board of all tracts claimed, in advance of any confirmation of the title. Those instructions hold the following language on the subject:

"You will require the claimant in all cases to file a duly authenticated plat of survey, exhibiting the tract claimed, and showing the nature and extent of any claim interfering therewith.

"This is deemed indispensable, in order by such initiatory survey to fix with precision and certainty the limits of any tracts claimed, thereby avoiding, in regard to location, all controversy hereafter in case of confirmation, and furnishing, at the same time, to the commission and to the courts evidence of the existence and nature of conflicting claims."

These instructions, as they are termed, must in their nature be considered as *as* advisary merely. The board of commissioners, as constituted by the act of March 3d, 1851, in passing upon the validity of claims, exercises an authority wholly independent of the General Land Office and of the Department of the Interior. The act does not specify the particular evidence which the commissioners shall require to establish the validity of a claim, or authorize any other department or branch of the government to do so; and what the amount and character of the evidence shall be to justify a confirmation, is consequently within the exclusive province of the commissioners to determine.

By the law, however, constituting the commission, patents for the land confirmed by the board are to be issued from the General Land Office. Such has heretofore been the case in regard to private claims confirmed by former commissions and by Congress, and it appears to have been usual for the office to issue instructions to boards of commissioners heretofore constituted, as the views of the head of that office in regard to the effect of confirming titles with indefinite or uncertain limits without previous survey must be supposed to be the result of a particular acquaintaince with the subject acquired by long experience. I cannot but feel that they are entitled to a respectful consideration. I do not regard them as authority, but in the nature of information and arguments that should not be lightly disregarded.

The leading object of requiring an initiatory survey in advance of confirmation, as stated by the Commissioner of the Land Office, "is to fix with precision the limits of every tract claimed, thereby avoiding in regard to location all doubt or controversy thereafter, and to furnish to the commission and the courts evidence of the existence and nature of conflicting claims."

I understand it to be the opinion of my associate, that the act of Congress constituting the commission has been misconstrued by the Land Office; that the authority conferred upon the board to decide upon the validity of claims does not embrace any matters connected with their location; that it is the duty of the board, in confirming a claim, to do it without a particular description of the land, but by reference to the description contained in the title papers, leaving it to the surveyor general to find the land and locate it; and that within this lo-

cating power of the surveyor general is embraced that of deciding on all interfering or conflicting claims to land, to the exclusion of the jurisdiction of this board to notice or consider them. If this be a correct view of the law, a survey preliminary to the confirmation would doubtless, in most cases and probably in all, be a mere nugatory act. For if, after the limits of a tract of land and the limits of any claim interfering therewith has been ascertained and pointed out by an initiatory survey, it would be beyond the authority of the commissioners to confirm the claim according to such limits, or to determine to which claimant the disputed land should be confirmed, such survey would seem indeed to be wholly useless.

I have not been able to satisfy myself that the jurisdiction of this board is thus restricted.

By the 13th section of the act of March 3d, 1851, authority is undoubtedly conferred on the surveyor general of California to decide temporarily on the lines that shall be run as the boundary between conflicting claims that have been confirmed; but I do not think that it necessarily follows that the board are to disregard conflicts which come to their notice before confirmation, for the purpose of bringing them within the jurisdiction of the surveyor general. On the contrary, I think that the power in the 16th section was conferred upon the surveyor general because it was foreseen that notwithstanding every precaution that might be taken by the board, questions in regard to conflicting boundaries might and probably would arise, after confirmation, for the determination of which some provision was necessary to be made.

By the 13th section of the act before mentioned, it is made the duty of the surveyor general to cause all private claims which shall be finally confirmed to be accurately surveyed; and it is then provided that the location of said (confirmed) claims the surveyor general is to have the same power as is conferred on the Register of the Land Office, and Receiver of the Public Moneys of Louisiana, by the 6th section of the act to create the office of surveyor of the public lands of the State of Louisiana, of the 3d of March, 1831.

In regard to this act of March 3, 1831, it is to be observed that previous to its passage several boards of commissioners had been constituted to act upon private claims in Louisiana, who had confirmed many claims, and whose reports numerous others had been confirmed by Congress. The 6th section of this act, thus referred to in the act of March 3d, 1851, has no relation to claims in the condition they had been or might be when presented to the commissioners, but only such as had been already acted upon. The language of the section is as follows: "That in relation to all such confirmed claims as might conflict or in any manner interfere with each other, the Register of the Land Office, Receiver of the Public Moneys for the proper land districts, are hereby authorized to decide between the parties, and shall in their decision be governed by such conditional lines or boundaries as have been or may be agreed upon between the parties interested, either

verbally or in writing; and in case no lines or boundaries be agreed upon between the parties interested, then the said register and receiver are hereby authorized to decide between the parties in such manner as shall be consistent with the principles of justice." The section then provides that the claims shall be surveyed in accordance with the decision of the register and receiver, and that their decisions and the patents issued in conformity thereto shall not preclude a legal investigation and decision of the controversy between the claimants.

I do not suppose that it was understood by the framers of the act of March 3d, 1851, that the commissioners and Congress, in the claims that had been already confirmed, had designedly confirmed claims with conflicting boundaries; nor that the framers of the act of March 3d, 1851, in providing a like remedy for conflicts between claims after they should have been confirmed by this board, had it in contemplation that the board would have confirmed claims with known conflicts, for the mere purpose of having them afterwards determined by the surveyor general. On the contrary, I regard the authority conferred on the surveyor general, as it appears to have been understood by the Commissioner of the Land Office, and as it was evidently that conferred on the register and receiver, under the act of 1831, as furnishing a remedy for such conflicts only as had not been previously noticed, and consequently could not have been avoided.

By the 8th section of the act of March 3, 1851, under which this commission is constituted, "each and every person claiming land in California by virtue of any right or title derived from the Spanish or Mexican government" is required to present the same to the board of commissioners, and the commissioners, on the evidence produced before them, are to decide on the validity of the claim. I think that the extent of the tract claimed, and the place where it is to be located, may be , and may be important to be considered by the commissioners in determining the validity of the claim. If the land is to be located on a tract that had been previously granted to another party, I do not perceive how we could declare the claim to be valid. So I think the title of a party to a tract of land claimed to have been granted to him, may be valid in part and invalid for the residue. If two grants interfere by lapping each other, both cannot be valid for the whole; and in order to determine the extent to which each is valid, the commissioners, I think, must necessarily, by means of an initiatory survey or other satisfactory evidence, determine the location and extent of each. In such the surveyor, in our certificate of confirmation, could not be referred exclusively to the description in the title papers for his direction in making his survey; but the commissioners must necessarily describe the boundaries as they should find them to be by evidence, and thus determine the locality of the land. The limits and boundaries of a tract, as well as its quantity, may be materially affected by the construction to be given to the title papers, which construction I think must be made by the commissioners. The validity of a claim may, therefore, as it seems to me, very much depend on the location which

is to be given the land claimed. Its locality is, consequently, a matter to be considered and passed upon by the commissioners.

An argument against the authority of this board to inquire into the locality of a tract of land claimed under Spanish and Mexican grants, has been sought to be drawn from the language of the 2d section of the act of May 26th, 1824, conferring authority upon the district court to determine certain land titles; it is said that act expressly gives the court authority to determine the locality and boundaries of the land claimed, and that the act constituting this commission not having used similar language, it is to be inferred that the authority was not intended to be conferred upon the commissioners. It is true that in the act referred to in the enumeration of what matters may be determined by the court, the locality and boundaries of the claim are among others mentioned. But this language is immediately followed by a direction to the court, "by a final decree to settle and determine the validity of the title," to comprehend all the matters which had been previously mentioned as coming within the authority of the court. If this be not the construction of the language, it would follow that the final decree of the court would have undetermined the very locality and boundaries which it had just been directed to pass upon. I think the term validity of title, thus used in the act of 1824, was intended to embrace the location and boundaries of the land, and all other matters proper to be considered, in passing upon the title; and that the words, validity of the claim, used in the 8th section of the act of 3d March, 1851, have the same signification, and consequently that the powers of this commission and of the district court, under the act of 1824, are in that respect the same. I do not therefore find any want of authority in this board to act upon and determine the boundaries of land for which a confirmation of title is sought.

The question, however, whether the commissioners shall require a survey to be made of a tract of land in advance of the confirmation of title, is one of evidence. The board has no direct authority to compel such a survey to be made, but it may decline to confirm a claim in the absence of and for want of such evidence of the extent, locality and boundaries of the tract claimed. Whether the board should do this in all cases in conformity to the views of the land office, I confess I have entertained considerable doubt. I believe with the head of that office, that much future controversy and litigation would by such surveys be prevented, and that other advantages would be derived from them. To require them, however, would impose a heavy burden of expense on the claimants; and if they are to be furnished in all cases, the action of the commissioners would be greatly delayed, and a much longer time to complete the business of the commission be required, than would otherwise be the case. For these, and other reasons which I do not deem it necessary to state in detail, I have come to the determination not to insist upon preliminary surveys where the description of the land is sufficiently definite, except in cases where the information which may be

to be derived from such surveys shall seem to be essential to the just determination of the claim.

I agree that the reasons heretofore assigned by my associate are sufficient to justify the confirmation of this claim, though in a portion of them I do not concur; and I concur in the confirmation of the claim without a preliminary survey.

(S'd) HILAND HALL, *Comm'r.*

December 18th, 1852.

CRUZ CERVANTES, claimant,
vs.
The UNITED STATES. } No. 56.

Final opinion or reason of decision and decree of confirmation.

This board having already, by an opinion heretofore pronounced and filed on the 3d day of August, 1852, decided upon all the questions necessary to a final decree of confirmation in this case, except as to the quantity, and having now fully considered this point, we proceed to declare the further reasons on which our determination is founded.

The decree of the Mexican government of the 18th of August, 1824, and the ordinance of the 21st of November, 1828, regulate the quantity of every grant made in virtue thereof, the maximum being eleven square leagues, and the minimum two hundred varas. The quantity then being an inherent ingredient of the grant, and expressly prescribed, must be presumed to have constituted the cardinal or controlling call of the same; the purpose of the map or diseno being the segregation of the premises from the residue of the public domain, to fix its identity and to furnish a guide to its future location and survey. The conjectural nature of this map or diseno as to quantity and the terms of the grant, which expressly reserves for the use of the nation whatever should result upon actual measurement over and above the named quantity within its bounds, clearly show that the intention of the grantor was not an irrevocable grant by metes and bounds to the extent thereof, but that the granted quantity lying within those metes and bounds was to be afterwards identified by a survey, describing the sobrante if any, and separating it from the private estate of the grantee. The map or diseno being the act of the petitioner, designating the land which he sought, we think it just and proper to restrain the grant to the extent of the limits or bounds of the granted quantity. This construction is in accordance with the intention so strongly manifested by the Mexican government not to grant the same land to different individuals. As to the sobrante within the bounds of the map, if there should be any, a grant thereof had no effect until after the ascertainment by the government of the precise location of the former grant, upon whose identification indeed its existence depends.

(Signed) HARRY J. THORNTON.

In consideration of all which, we now proceed to make the following final report or decree of confirmation: We do hereby decree that the claim of the said Cruz Cervantes be and the same is hereby confirmed to the extent of two square leagues or sitios de ganado mayor, and for no more; being the same land described in the grant and expediente referred to therein, and of which judicial possession was given to the claimant, as appears by the evidence; provided that the said quantity of land to him granted, and now to him confirmed, be contained within the boundaries called for in said grant and map to which the grant refers; and if there be less than two square leagues or sitios de ganado mayor within the said bounds, then we confirm to him the said less quantity, it being manifest that there is more than two hundred varas, which is the minimum, as eleven leagues was the maximum, of Mexican grants.

(Signed) HILAND HALL,
HARRY J. THORNTON,
Comm'rs.

OFFICE OF THE BOARD OF COMMISSIONERS OF CALIFORNIA LAND CLAIMS, *San Francisco, Feb. 26th*, 1852.

On this day, before Hiland Hall, one of the commissioners for ascertaining and settling private land claims in California, came David S. Spence, a witness produced in behalf of the claimant in the case of the petition of Cruz Cervantes, being No. 56 on the docket of said commissioners, and after being duly sworn, testified as follows. The law agent was notified and attended:

Questions by Mr. Jones, counsel for the claimant.

1st. What is your name, and age, and residence?

Answer. My name is David S. Spence; I am 53 years of age, and I reside in Monterey, where I have resided for twenty-eight years past.

2d. Are you acquainted with the handwriting of Nicolas Gutierrez, Francisco Del Castillo Nigrete, Manuel Jimeno, Juan Miguel Anzar; and if so, look upon the expediente of Cruz Cervantes, marked A, with the initials H H, and say if the signatures upon said paper of said persons are genuine?

Answer. I have seen them all write, and am acquainted with their handwriting. The signature of each of said persons I have no doubt is genuine.

3d. Did Nicolas Gutierrez ever act as governor of California; and if so, when?

Answer. He was acting as such in the year 1836, and Castillo Nigrete was secretary.

4th. Has said Anzar acted as justice of the peace, and when?

Answer. He was justice of the peace, but I cannot state what time. It was, I think, some time between the years 1839 and 1842.

(Signed) DAVID S. SPENCE.

Sworn and subscribed before me,

HILAND HALL, *Comm'r.*

Filed in office, February 27, 1852.

GEO. FISHER, *Sec'y.*

Sello primero—Seis pesos.

Habilitado provisionalmente por la administracion de la aduana maritima de Monterey, de la Alta California, para las años de mil ochocientos y cuatro y mil ochocientos treinte y cinco.

FIGUERRA.
A. RAMIREZ.

Revalidad para el benio de 1836 y 1837.

GUTIERREZ,
A. RAMIREZ.

Nicolas Gutierrez, teniente coronel de caballeria permanente, commandante general ynspector y gefe superior politico interimo del territorio de la Alta California.

Por cuanto el Cd. Cruz Servantes Mejicano, por nacimente ha pretendido para su beneficio personal, y el de su familia el terreno conocido el nombre de Sn. Joaquin cuyas linderos son al norte Sn. Felipe al Sen. Sta. Ana, al poniente el llano de Sn. Juan y oriente las lomas del mismo sitio practicada preriamente las deligencias y averiguacionas segan lo dispuesto por las leges y reglamentas de la materia, usando de las facultades que me son conferidas en decreto, de este dia y á nombre de la nacion Mejicana, he venido en concederle en terreno ne mencienado declarandole la propriedad de el por las presentes letras á reserva de la aprobacion de la ex'ma. deputacion y bajos las conditiones seguientes:

1st. Que se sometera á las que estabiciere el reglamento que se ha de formar para la distribucion de terrenos baldros y que entre tanto ni el agraciado ni sus herederos podran dividir ni enagenar, el que se les adjudicar, imponar, sarso vinculo panza y potica ni otro gravamen aunque sen por causa prodosa ni pasar lo á manos amiertas.

2nd. Podra circar lo sui perjadicar las travesias cammas y servidumbres distinandolo al uso y cultivo que mas le acomode, perodento de un año á lo mas fabricara casta y estara habitada.

3rd. Solicitar la del juez respectivo que le de posecion juridica en virtud de este des pacho por el cual se demarcasan las ciuderos en cuyos limites pondran á mas de las mojoneras algunos arboles putales ó sylvestros de alguna utilidad.

4th. El terreno de se que hace donacion es dedos sitios de ganado mayor segan el diseno que corre en el espediente. El juez que dieri la posecion lo hara medir conforme á ordinanza que dando el sobrante que resulte á la nacion por las usas convenientes.

5th. Si contraviniere á estas condiciones pordera su derecho al terreno y sera denunciable por otro.

En consecuencia mando que serviendole de titulo el presente y teniendose, por firme y validero si tome razon de el en el libro que corresponde y se entregal al interesado para su resguardo y demas fines.

Dado en Monterey, á primero de Abril, de mil ochocientos triente y seis.

(Firmado) NICOLAS GUTIERREZ,
(") F'CO DEL CASTILLO NIGRETE, S'RIO.

Quede tomada razon á fojas 103, y sinalado con el numero 99, en el libro que corresponde y otra el la secretaria demi cargo.

Monterey, 2 de Abril, de 1836.

(Firmado) CASTILLO.

Sello cuarto—Una cuartilla.

Habilitado provicionalmente de la aduana maritima del puerto de Monterey, en el departmento de las Californias, para los años de mil ochocientos cuaranta y mil ochocientos cuarenta y uno.

ALVARADO.
ANTO. MARIA ASIA.

Manuel Jimeno, casarin secretario del gobierno del departmento de las Californias.

Certifica que el diseno que antecede el cual est á rubricada de mi mano, es igual al que corre original agregado al esped'te que existe en la s'na de mi cargo perteniciente á Don Cruz Cervantes del parage nombrado San Joaquin, y para las fines que le convengan al interezado le estiendo la presente en Monterey, de nueve de Febrero, de mil ochocientos cuarenta y uno.

(Firmado) MAMUEL JIMENO.

Sello cuarto—Una cuartilla.

Habilitado provicionalmente por la aduana maritima del puerto de Monterey, en el departmento de las Californias, para los años de mil ochocientos y curanta y mil ochocientos cuarenta y uno.

ALVARADO.
ANTONIO MARIA ASIA.

San Juan de Castro,
Feb. 12, 1841.

Por presentada y admitido procedase á dar la posecion que se solicita á cuyo afecto se senare el Jueves 18 del corriente citense á las colnidantes por dicho dia y nombrese previamente medidores y contradores aquienes se en hara, saber por sa aceptacion y priamente.

Asi yo el juez de yusta lo decreta y firme.

ANZAR.

Assa.

Manuel Castanares.

S'ro Juez de paz Constitucional.

Cruz Cervantes ciudadano Mejicano y recino de la demarcacion de este pueblo ante la justificacion de V. comomas haya lugar en drodigo que habiendo obtenado la consecion propia de terreno conocido con el nombre de San Joaquin occurro ante V., con el fui de que se seiber darme la posecion juridica conforme esta prevenido en el articulo tercero de cuyo titulo que se le expedir confecha de primero de Abril, de mil ochocientos trientes y seis, el cual dividamente acompano para que obre en el los efectos descados.

P. T. á V., suplico se digne ponerme en la posecion que laliciloque de lo escribero merced y justicia.

Monterey, Febrero 10, 1841.

CRUZ CERVANTES.

En la misma fecha presente el C. Cruz Cervantes, se le notifico el antroque antecede y entendido dijo lo aye y se da por citado firmandolo con mijo con las mi assa.

JUAN MIGUEL ANZAR.

Assa.—M. Castanares.

En la misma fecha se liberavon los boletos de comparendo en complimento de lo mandado en el auto antecede, y por constancia de la diligencia practicada lo anoto y rubrico.

(*Rubrica.*)

Manuel Castanares, *Assa.*

Sello cuarto—Una cuartilla.

Habilitado provisionalmente por la aduana maritima de la puerto de Monterey, en el departmento de las Californias, para los años de mil ochocientos cuarenta y mil ochocientos cuarenta y uno.

ALVARADO.
ANTONIO MARIA OSIO.

Al pie de la coma que vede norte en el rancho de San Joaquin (a) Rosa Morada á los diez y ocho dias del mes de Febrero, de mil ochocientos cuarenta y uno presentes los ciud'o Francisco Pacheco colnidante por su rancho de San Felipe y el ciud'o Manuel Larias, por el

sujo de Santa Ana, y el juez de 1st ynstancia, del 1st distrito, del departmento del Californias, notifique á las espresadas colnidantes y se hayan presentes el auto anterior y entendidos lo firmaron conmigo y los de assistencia losque supieron.

ANZAR,
MANUEL LARIOS,
FRANCISCO PEREZ PACHECO.

Asa.—MANUEL CASTANARES.

En el mismo parage dia mes y año, yo é referido juez en complimiento de decrete de doce del corriente Febrero, presentes los citados colnidantes pa la medicion del terreno senelamento de linderos y posecion, juridica nombre de medidores á Cruz Perez y Juan Espinosa, quienes perala aceptacion y juramento procedieron el desempeno de su en cargo asi yo el mencionado juez la decrete y firme con las de mi asistencia.

FRANCISCO PEREZ PACHECO.
JOSE MANUEL BARGAS.

En la misma fecha y el espresado parage se les artifico el nombrasu'to hecho en los C. C. Cruz Perez y Juan Espinosa.

Sello cuarto—Una cuartilla.

Habilitado provicionalmento por la aduana maritima del puerto de Monterey, en el departmento de las Californias, por los años de mil ochocientos cuarenta y mil ochocientos cuarenta y uno.

ALVARADO.
ANTONIO MARIA ASIA.

Y de jeron y aceptacion y acceptaron dicho en cargo y juravon por Dios nuestro Señor y la senal de la Sta. Cruz, y cumpler fiel y legalmente á todo su liel saber y entender sin frande contra persona alguna y no firmaron por no saber y lo hize yo el presente juez con las de assa.

ANZAR,
MANUEL LARIOS,
FRANCISCO PEREZ PACHECO.

Assa.—MANUEL CASTANARES.

JOSE MANUEL BARGAS.

Yncontinente yo el referido (alca) juez mandé traer el cordel con que se han de medir las terrenas y que se mida de cincuenta varas y in presencia de los colnidantes lo tomaron y con una vara de medir usual, Mexicana, temiendó la en la mano, medieron cincuenta varas pa hacer la referida medida y lo firme y con los de assistencia.

ANZAR,
MANUEL LARIOS,
JOSÉ MANUEL BORGAS.

Assa.—MANUEL CASTANARES.

En el mismo parage mes dia y año nombre pa contadores a las C. C. benito Cananza y Man'l Bargas quienes previá la aceptacion y jaramento procedieron al desempeno de su encargo asi lo de crete y firme con los de mi assa.

ANZAR,
FRANC'O PEREZ PACHECO,
JOSÉ MANUEL BARGAS.

Assa.—Manuel Castanares.

En el mismo lugar mes dia y año a las nueve de la monana yo el presente juez mandé a los medidores nombrados.

Sello—Una cuartilla.

Habilitado provicionalmente de la aduana maritima del puerto de Monterey, en el departmento de las Californias, para los años de mil ochocientos cuarenta y mil ochocientos cuarenta y uno.

ANTONIO MARIO ASIO.

Alvarado.

Se porgan fe'a las medidas de tierras que se han de hacer al Ciud'o Cruz Cervantes y en el mismo punto des de el pie de la ya mencionada loma y en el lado del norte hasta la punta de San Juan, llamado del Tequesquito hay cuir cordeles de cincuenta varas y desde el mismo Sanjon de medieran al Sciente doce cordeles de cincuenta varas, habendose combenido asi por Cervantes y su colnidante Larios punto donde debera ponerse una mohonera y desde esta que queda al V. el sobera del lindero al Arroyo Seco, conclugendo su sitio en el portezuelo de los picachos y siendo el terreno irregalar serandos dos sitios poso mas ó menas de ganado mayor Ypa constar lo firmo con los de mi assa.

JUAN MIGUEL ANZAR,
MANUEL LARIOS,
FRANCO. PEREZ PACHECO,
JOSÉ MANUEL BARGAS.

Assa. Man'l Castanares.

En el rancho conocido con el nombre de Sn. Joaquin, (a) Rosa Morada, que es en el punto centrico del terreno medido, yo el juez, de 1st ynstancia del 1st distrito del departmento de las Californias a los diez y ocho dias del mes de Febrero de mil ochocientas cuarenta y uno, des pues de practicadas las mendas del mencionado mucho presentes los colnidantes, C'as Francisco Perez Pacheco, Cruz Cerbantes, & Manuel Larios, que conformes con todo lo mas que ver mandé entar en posecion del rancho al C'o Cruz Cervantes, bajo las medidas, citados y formalidades de castumbres en casos semejantes lo que verifico arrancando ller has y haciendo demastraciones como dueno del terreno de se que ha dado en posecion y propriedad cuja validacion la autorizo y firmo con los de mi asistencia y los colnidantes.

JUAN MIGUEL ANZAR,
MANUEL LARIOS,
FRANC'O PEREZ PACHECO.

Assa.—Man'l Castanares.

Sello cuarto—Una cuartilla.

Habilitado provisionalmente por la aduana maritima de Monterey, para las añas de 1839 y 1840.

ANTONIO MA. ASIA.

ALVARADO.

Habilitado provisionalmente pa el año de 1841, pr. non haber del bienio presente.

[SELLO.] ARIAS.

SAN JUAN DE CASTRO, *Feb. 20th*, 1841.

Tomese razon en el cuadermo de poseciones y rebuel vase original este espediente al interesado pa que la sura de titulo, asi yo el juez lo determine mandé y firme con los de mi asistencia.

ANZAR.

Assa.—MAN'L CASTANARES.

En la misma fecha se tome razon a foja 1st, del libro respectivo y se devolvio el espediente en 10 fojas utiles en cumplimiento del antecedente anto y para constancia lo anoto y rubrico.

Rubrica.

Al izquardo de mi cargo le corresponden pr. los derechos cantados en la practica de las anteriores diligencias los venite y seis pr. cinco que aparacero en la suma de la sigte cuenta, por la presentacion de mi escreto con.

Sello cuarto—Una cuartilla.

Habilitado provisionalmente por la aduana de Monterey, para los años de 1839 y 1840.

ANTONIO MA. ASIA.

[SELLO.] ALVARADO.

Recandos y su procedo	$1 0 0
Por tres notificaciones d' entro y fuera del inzguardo	2 3 0
Por tres notas a 4 r's	1 4 0
Nombramiento de penta su aceptacion y juramento	1 5 0
Diligencia del reconocuito del cordel	4 0
Posecion en mi acto	3 0 0
Por dos antos de substanciasion	2 0 0
Toma de razon	6 0
Por 16 leguas de huda buelta	12 0 0
Por cinca p. escritas a 3 r's	1 7 0
Suma	$26 5 0

(Frdo.) JUAN MIGUEL ANZAR.

Original expediente, marked A H H, and annexed to this deposition of David S. Spence, taken before Commissioner H. Hall, February 26th, 1852.

Filed in office February 27th, 1852.

(Signed) GEO. FISHER,
Secretary.

Translation.

First seal.

Authorized provisionally by the collector of the maritime custom-house of Monterey, for the years 1834 and 1835.

(Signed) FIGUERRA,
(Signed) A. RAMIREZ.

Revalidated for the biennial years of 1836 and 1837.

A. RAMIREZ,
GUTIERREZ.

Nicolas Gutierrez, lieutenant colonel of the permanent cavalry, commandant general, inspector and superior political chief ad interim of the Territory of Alta California.

Whereas citizen Cruz Cervantes, a Mexican by birth, has applied for his own benefit and that of his family for the parcel of [SEAL.] land known by the name of San Joaquin, bounded on the north by San Felipe, on the south by Santa, on the west by the plain of San Juan, and on the east by the hills of the same name; and whereas all the requirements of the laws and regulations in the matter have been complied with, now, by virtue of the authority in me vested, I have thought proper, by a decree of this day's date, and in the name of the Mexican nation, to grant to him the aforementioned parcel of land, declaring the same to be his property by these letters patent, subject to the approval of the excellent deputation and the following conditions:

1st. He will submit to such conditions as shall be made by the regulations hereafter to be made for the distribution of vacant lands, and that meanwhile neither the grantee nor his heirs shall divide or alienate that which is adjudicated them, nor shall they subject it to rent, entail, bond, mortgage, nor to any incumbrance whatever, even if it should be for charitable purposes, nor convey it into mortmain.

2nd. He may fence it without obstructing crossings, roads, and servitudes, putting it to such use and culture as he may deem best, but within one year at furthest he shall build thereon a house and shall inhabit it.

3d. He shall solicit of the respective judge to give him judicial possession by virtue of this patent, by whom the boundaries shall be marked, at the limits of which, besides the landmarks, there shall be set some fruit trees or else wild ones of some usefulness.

4th. The land of which donation is made is of two sitios de ganado mayor, (2 sq. leagues,) according to the plat annexed to the proceedings. The judge who may give possession will cause it to be measured agreeably to ordinance, leaving the excess, (sobrante) which may result, to the nation for its purposes as may be deemed convenient.

5th. If he shall contravene to these conditions he shall lose his right to the land, and it may be denounced by any other person.

Wherefore I command, that holding this as a firm and valid title, the same be entered in the corresponding book, and be returned to the interested party for his own security and further ends.

Given in Monterey, on the 1st of April, 1836.

NICHOLAS GUTIERREZ.
F'CO DEL CASTILLO NIGRETE,
S'rio.

Entered on folio, and marked No. 99, on the corresponding book in the secretary's office under my charge.

Monterey, April 2nd, 1836.

CASTILLO.

Fourth stamp—One cuartilla.

Legalized provisionally by the collector of customs of Monterey, in the department of the Californias, for the years 1840 and 1841.

(Signed) ANTONIO MARIA ASIO.
(Signed) ALVARADO.

Manuel Jimeno, Casarin secretary of the government of the department of the Californias.

I certify that the foregoing plat marked with my scrawl is similar to the original annexed to the record of proceedings on file in the office under my charge, belonging to Cruz Cervantes, of the place called San Joaquin, and, for the purposes that may be convenient to the party interested, I issue these presents in Monterey, 9th of February, 1841.

(Signed) MANUEL JIMENO.

Fourth stamp—One cuartilla.

Legalized provisionally by the collector of the customs of Monterey, in the department of the Californias, for the years 1840 and 1841.

(Signed) ANTONIO MARIA ASIO.
(Signed) ALVARADO.

To the constitutional Justice of Peace:

Cruz Cervantes, Mexican citizen, and a resident of the precinct of this town, in due form of law to you represents: that having obtained the proper grant of the tract of land known by the name of San Joaquin, I appear before you for the purpose that you will be pleased to give

me legal possession of the same according to the provision of the 3rd article of the title issued on the 1st of April, 1836, which I hereby duly accompany for the desired purposes; therefore I solicit you to be pleased to put me in possession which I ask, by which I will receive favor and justice.

Monterey, February 10th, 1841.

(Signed) CRUZ CERVANTES.

SAN JUAN DE CASTRO, *February 12th,* 1841.

This petition being presented, it is received; let the possession solicited be given, for which purpose, Thursday, the 18th inst., is set apart; let the conterminous neighbors be summoned to appear on that day, and let the measurers and tally-men be previously appointed, who shall be notified of their appointment for their acceptance and taking the oath of office. Thus I, the judge of the first instance, have decreed and signed.

(Signed) ANZAR.

Ass't witness—
M. CASTANARES.

On the same day, being present, Cruz Cervantes was notified of the preceding decree, and, after having heard it read, said that he understood it, and that he considers himself notified, and signed this with me and my assisting witnesses.

(Signed) JUAN MIGUEL ANZAR.

Assisting witness—
MANUEL CASTANARES.

On the same day the summons were issued for the appearance of the parties as provided in the preceding decree, which I note here as one of the acts, and mark it with my signet. [A signet.]

Ass't witness—
MAN'L CASTANARES.

At the foot of the hill, on the north side in the rancho of San Joaquin, (alias Rosa Morada, the Purple Rose,) on the 18th day of the month of February, 1841, being present citizen Francisco Pacheco, adjoining with his rancho of San Felipe, and the citizen Manuel Larios, with his rancho of Santa Ana, I, the judge of the first instance of the first district of the department of the Californias, have notified the aforesaid conterminous neighbors, who are present, of the foregoing decree, and after having it understood, they signed those presents with me and my assisting witnesses, who could not write.

(Signed)

ANZAR,
MAN'L LARIOS,
FRANC'O PEREZ PACHECO.

Ass't witnesses—
MAN'L CASTANARES.

At the same place, the same day, month and year, I, the aforesaid judge, in compliance with the decree of the 12th of the present month of February, the aforesaid conterminous neighbors being present for the purpose of measuring the said land, marking out its boundaries, and giving legal possession of the same, have appointed Cruz, Perez, and Juan Espinosa, measurers, who, having first accepted the appointment and taken the oath of office, entered on the discharge of their duties. Thus I, the aforesaid judge, have decreed and signed with my assisting witnesses.

(Signed) ANZAR,
MANUEL LARIOS.

(Signed)
MANUEL CASTANARES,
JOSÉ MANUEL BARGAS,
FRANC'O PEREZ PACHECO.

On the same date, at the same place, citizens Cruz, Perez, and Juan Espinosa, were notified of their appointment, and stated that they have accepted and do accept the said appointment, and have taken the oath by the Lord our God, and the Holy Cross, to discharge faithfully and according to law their duties, to the best of their knowledge and belief, without fraud upon any person; and they have not signed this, not knowing how to write; and I, the present judge, have signed with my assisting witnesses.

(Signed) ANZAR,
MAN'L LARIOS.

(Signed) ass't witnesses—
MANUEL CASTANARES,
FRANC'O PEREZ PACHECO,
JOSÉ MANUEL BARGAS.

Immediately, I, the aforesaid judge, have caused the rope to be brought with which the land is to be measured, and to measure off fifty varas of it, and in the presence of the conterminous neighbors it was taken with the usual Mexican *Mexican* measurement vara, holding it in the hand measured off fifty varas of the same for the aforesaid measure, and I signed this with my assistant witnesses.

(Signed) ANZAR,
MAN'L LARIOS.

(Signed) ass't witnesses—
JOSÉ MANUEL BARGAS,
MANUEL CASTANARES.

On the same place, month, day and year, I appointed Benito Cananza and Manuel Bargas, tally-men, who, having first accepted their appointment and taken the oath of office, entered upon the discharge of their duties.

Thus I have decreed and signed with my assisting witnesses.
(Signed) ANZAR,
MANUEL LARIOS.

(Signed) ass't witnesses—
FRANC'O PEREZ PACHECO,
JOSÉ MANUEL BARGAS,
MANUEL CASTANARES.

On the same place, month, day, and year, at nine o'clock in the morning, I, the aforesaid judge, directed the measurers appointed to prepare for the measurement of the land to be made for Cruz Cervantes, and at the same point from the foot of the aforesaid hill, and on the north side to the point of the deep ditch (slough) called "Tequisquite," there are one hundred cords of 50 varas; and from the said deep ditch there were measured to the south 112 cords of 50 varas, an agreement having been made between Cervantes and his adjoining neighbor where the landmark is to be placed; and from thence, which is to the east, the "Arroyo Seco," or dry ditch, shall serve as the boundary completing his sitio in the "Partezudo de los Picachos," (the gap in the sharp-pointed hills,) and the land being of irregular form, there may be two leagues (sitios) more or less.

In testimony whereof I sign with my assisting witnesses.
(Signed) JUAN MIGUEL ANZAR.
MANUEL LARIOS.

(Signed) ass't witnesses—
MANUEL CASTANARES,
FRANC'O PEREZ PACHECO,
JOSÉ MANUEL BARGAS.

In the rancho known by the name of San Joaquin (a) Rosa Morada, which is the central point of the land measured, I, the judge of the 1st instant of the 1st district of the Californias, on this 18th day of the month of February, 1844, after having concluded the measurement of the aforesaid rancho, being present the conterminous neighbors, citizens Francisco Pacheco, Cruz Cervantes, and Manuel Larios, who agreed to every thing that was most expedient to be done, have caused citizen Cruz Cervantes to enter into the possession of the rancho with the aforesaid measurement, and the formalities customary on such occasions, which he verified by pulling up grass and making demonstrations as owner of the land, of which possession and ownership was given to him. The validity of which I authenticate and sign with my assisting witnesses and with the conterminous neighbors.
(Signed) JUAN MIGUEL ANZAR.
MANUEL LARIOS.

(Signed)
FRANC'O PEREZ PACHECO,
JOSÉ MANUEL BARGAS,
MANUEL CASTANARES.

SAN JUAN DE CASTRO, *Feb'y 20th*, 1841.

Let a register of this record of proceedings be made in the respective book of possession, and let this original be returned to the party interested, that it may serve him as a title. Thus I, the judge, have decreed, ordered and signed, together with my assisting witnesses.

(S'd) ANZAR.

(S'd) ass't witness—
MANUEL CASTANARES.

On the same day a register was made in the folio 1 of the respective book, and the record of proceedings was returned on 10 written folios, in compliance with the preceding decree, and in evidence thereof I note and mark the same with my signet.

[A signet.]

To the court under my charge, for the foregoing proceedings had, are due the twenty-six dollars and five reales which appear in the aggregate of the following account, to wit:

For presentation of a petition with decrees thereon - -	$1 0 0
Three summons within and without the court - - -	2 3 0
Three notices or certificates at 4 reales each - - -	1 4 0
The appointment of measurers and tally-men, their acceptance and oath of office - - - - - - - -	1 5 0
Adjusting the cord - - - - - - - - -	4 0
Giving possession in one ac't - - - - - -	3 0 0
Two decrees of final proceedings - - - - -	2 0 0
Registry - - - - - - - - - - -	6 0
Mileage, 16 leagues, going and returning - - - -	12 0 0
Writing 5 folios at 3 reales - - - - - - -	1 7 0
Aggregate - - - - - - - - -	$26 5 0

(Signed) JUAN MIGUEL ANZAR.

I certify the above to be a correct translation from the original Spanish, of which a correct copy is on file in this office.

(Signed) GEO. FISHER,
March 11th, 1852. *Sec'y.*

CALIFORNIA LAND COMMISSIONERS,
San Francisco, March 2d, 1852.

At Chambers.

Before me, Harry J. Thornton, one of the board of commissioners to ascertain and settle private land claims in the State of California, came Alexis Godey, a witness summoned to testify in behalf of the claimant, Cruz Cervantes, whose petition is No. 56 on the docket. The law agent of the United States being present, and the said witness being by me first duly sworn, testified as follows, to wit:

Question by the claimant.

Question 1st. What is your age, name, and residence?

Answer. My name is Alexis Godey; I am thirty-three years old, and reside in the county of Santa Clara.

Question 2d. Do you know any rancho in California called "San Joaquin;" if so, state where it is; whether it is occupied; and if so, who by and when you first knew it?

Answer. I know a rancho called San Joaquin near that of Francisco Pacheco, south of Pacheco's pass, in the county of Monterey. I know it to be occupied by Cruz Cervantes, and have known the rancho since 1846.

Question 3d. Was it occupied when you first knew it?

Answer. It was occupied. He had cattle, horses, sheep, and a house on it, and cultivated the land, and his family lived on the rancho. The house looked to be several years old. They had corrals on it. I have been there several times, and saw it always occupied.

(*Cross examination, by Geo. W. Cooley, esq., U. S. law agent.*)

Question 1st. What quantity of cattle, horses, and sheep had he on the rancho?

Answer. It was estimated he had five hundred head of cattle, about forty horses, and about one hundred sheep.

Question 2d. To what extent did the cattle, horses, and sheep range over the rancho of San Joaquin?

Answer. I have seen the stock around about the house, and mixed with that of his neighbor's all over the rancho.

Question 3d. To what extent was the land cultivated?

Answer. I have seen four or five acres at a time in one enclosure.

(Signed) ALEXIS GODEY.

Sworn to and subscribed before me, this 2d of March, 1852.

HARRY J. THORNTON, *Comm'r, &c.*

Filed in office, March 2d, 1852.

(S'd) GEO. FISHER, *Sec'y.*

Before the Board of Land Commissioners for ascertaining and settling private land claims in California.

March 16*th*, 1852.

In the matter of the claim of Cruz Cervantes, claiming the rancho of San Joaquin—

And now it being moved by the counsel for the claimant that said cause should be set down for hearing on the petition and testimony of the claimant;

The undersigned moves the Board that the petition be dismissed for the following reasons:

First. Because the claimant had not filed a copy of the expediente existing in the archives, being the evidence of the proceedings had upon which the alleged title was issued to the claimant; said expediente being required, by the 8th section of the law creating this Board, and a rule of the Board, to be filed as a part of the claimant's "claim," "right," "title," and "grant."

2d. Because the claimant has not made out a prima facie case for a decree of confirmation of his alleged claim, or any part thereof.

(Signed) GEO. W. COOLEY,
U. S. Law Agent.

OFFICE OF THE BOARD OF COMMISSIONERS OF CALIFORNIA LAND CLAIMS, *San Francisco, March 30th,* 1852.

On this day, before me, Harry J. Thornton, one of the commissioners for ascertaining and settling private land claims in the State of California, came Juan Castaneda, a witness produced in behalf of the United States—claimant being Cruz Cervantes, No. 56, on the docket of the commissioners—being duly sworn, testifies as follows: his evidence being given in the Spanish language, and interpreted by the secretary, Geo. Fisher:

Questions by the law agent of the United States.

Quest. 1st. What is your name, age, and place of residence?

Ans. My name is Juan Castaneda; my age about forty-five years; and my pres ence Sonoma.

Quest. 2d. What official stations have you held under the Mexican government in California?

Ans. I came to California in 1838, as captain in the Mexican army, and then was appointed secretary to the commander-in-chief of the military forces in California. The commander-in-chief was Mariano Guadaloupe Vallejo; I was his secretary upwards of a year.

Quest. 3d. What was the custom and usage in California in obtaining the approval of the territorial deputation or departmental assembly to grants or concessions of land made by the governor; by whom was it usually obtained?

Ans. There was no law regulating the subject. The grantees or parties interested presented their title-papers to the secretary of the assembly, who gave an account of the same to the assembly for its action.

Cross examination by attorney for claimant.

Cross quest. 1st. Do you make a distinction between "titulos" and "concessions?"

Ans. There was never made any difference between "titulos" and "concessions." The "titulos" were considered as security for the favor granted, and to secure the property.

Cross quest. 2d. To whom was what you call the "titulo" delivered after the making of it?

Ans. To the party interested, soliciting the land.

Quest. 3d. Were you ever a member of the territorial deputation of California?

Ans. I never was a member.

Quest. 4th. Were you ever secretary of the assembly?

Ans. I never was.

Quest. 5th. After you ceased to be secretary to the commander-in-chief, what was your occupation after that?

Ans. I continued in my grade as captain of cavalry in the Mexican army. Whilst I was secretary of the commander-in-chief, I went to Mexico on business of the commander-of-chief, in the latter part of 1839 or the beginning of 1840, and returned with General Micheltorreno in 1842.

Quest. How long after; and when did the departmental assembly sit during the time that Micheltorreno was here as governor?

Ans. I do not know. I landed with General Micheltorreno at San Diego; from thence we proceeded to Los Angelos; from thence I was detailed to the northern frontier at Sonoma, where I remained most of the time. I was once at Monterey in the year 1843, when the assembly was in session, but I was never present in the hall of assembly.

Quest. 7th. When what you call the "titulo" was delivered to the interested party, what was done with the "concession?"

Ans. I do not know.

Quest. 8th. Where was General Vallejo stationed at the time you was his secretary?

Ans. At Sonoma.

(S'd) J. DE CASTANEDA.

Sworn to and subscribed before me, this 30th day of March, 1852.

HARRY J. THORNTON, *Comm'r.*

Filed in office, March 30th, 1852.

(Signed) GEO. FISHER, *Sec'y.*

OFFICE OF THE COMMISSIONERS OF PRIVATE LAND CLAIMS IN CALIFORNIA, *San Francisco, April 26th,* 1852.

On this day, before me, Harry J. Thornton, one of the commissioners for ascertaining and settling the private land claims in California, came Francisco Perez Pacheco, a witness produced in behalf of the claimant, Cruz Cervantes, whose petition is No. 56 on the docket of said commissioners; the witness being duly sworn, testified as follows. The law agent of the United States was notified and attended by Mr. Greenhow.

Questions by claimant.

Quest. 1st. What is your name, age, nativity, and place of residence?

Ans. My name is Francisco Perez Pacheco; 59 years of age; my birthplace Guadalajara, in Mexico; my residence in Monterey, in California.

Quest. 2d. How long have you resided in California, and what places have you resided in since you came?

Ans. I resided in California thirty-two years, almost exclusively at Monterey, except the time that I resided at my rancho called San Felipe de Guadalajara, in the county of Monterey.

Quest. 3d. Do you know the claimant in this case, Cruz Cervantes; if so, where does he reside?

Ans. I do know him; he lives on his rancho called San Joaquin, in the county of Monterey.

Quest. 4th. State how long he has resided on that rancho?

Ans. I do not exactly recollect the time, but I believe it was about two years after the revolution of governor Chico and Gutierrez when he commenced residing on it.

Quest. 5. State whether he has stock upon said rancho, and whether he has cultivated or otherwise improved it?

Ans. He has occupied it with stock and built some small houses upon it, and made inclosures and cultivated the ground, and still occupies it thus.

Quest. 6th. Were you present when judicial possession was given to Cervantes of his said rancho; if so, state by whom it was given?

Ans. I was present, and it was given by Juan Miguel Anzar, acting in the capacity of justice of the peace of the mission of San Juan Bautista.

Quest. 7th. Examine the paper marked "A," attached to the deposition of David Spence given in this case, and say whether your signatures where they appear upon that paper are genuine, and whether they were made at the time they purport?

Ans. I have examined the paper described in the foregoing interrogatory, and find six signatures on various pages in my own handwriting, which I recognise as my genuine signatures, signed at the time stated in said document.

Quest. 8th. State whether you saw Anzar, Manuel Castanares, present at the giving of the judicial possession you have spoken of, and if you recollect whether they signed the paper above referred to on the same occasion with you?

Ans. I have seen Anzar and Manuel Castanares present at the giving of the judicial possession of said rancho to Cruz Cervantes, but I do not recollect of their having signed the said document at that time with me, but I do recognise the signatures of Anzar in the said document as genuine signatures; also the signatures of Jose Manuel Bargas as genuine.

Quest. 9th. State whether you know where Anzar, Castanares and Bargas now are?

Ans. Anzar is still living at the town of San Jose, in the county of Santa Clara, in a very feeble state of health; Castanares is in Mexico, and Bargas is dead.

Quest. 10th. How many leagues is the rancho de San Joaquin, of which you have been testifying, from Monterey?

Ans. I believe it is fourteen or fifteen leagues from Monterey.

Quest. 11th. Did you know Jose Joaquin Gomez, Jose Maria Maldonnado, Jose Antonio de la Guerra y Carillo; and if so, do you know where they now are?

Ans. I did know them all. Gomez is dead; Maldonnado is also dead, and Carillo I believe is living at Santa Barbara.

Cross interrogatories proposed by law agent.

Quest. 1st. At the time when the possession was given to Cervantes of this rancho, was any doubt expressed as to the goodness of his title?

Ans. I do not know of any doubt having been expressed on the subject.

Quest. 2d. Did you always understand that his title was perfect?

Ans. I did.

(Signed) FRANC'O PEREZ PACHECO.

Sworn to and subscribed before me, the law agent being notified, &c., this 26th of April, 1852.

(Signed) HARRY J. THORNTON, *Comm'r.*

Filed in office, April 26th, 1852.

(Signed) GEO. FISHER, *Sec'y.*

OFFICE OF THE BOARD OF COMMISSIONERS OF CALIFORNIA LAND CLAIMS, *San Francisco, April 28th*, 1852.

On this day, before me, Harry J. Thornton, one of the commissioners for ascertaining and settling private land claims in California, came Wm. E. P. Hartwell, a witness produced in behalf of the claimant, Cruz Cervantes, whose petition is No. 56 on the docket of the board, and after being duly sworn, testified as follows. The law agent was notified and attended by Mr. Greenhow:

Questions by claimant's counsel.

Quest. 1st. What is your name, age and place of residence; how long you have resided in California, and what public offices you have filled?

Ans. My name is Wm. E. P. Hartwell; my age 54 years; my place of residence in the county of Monterey. I have resided in California thirty years. I have filled the offices of inspector general of the missions, collector of the port of Monterey, translator to the military government of California, and am at present State translator.

Quest. 2d. Are you well acquainted with the customs and usages in

California under the Mexican government in relation to grants of land?

Ans. I am very well acquainted with them.

Quest. 3d. After a grant was made by the political chief, was the recipient of the grant, according to those usages and customs, entitled to go into possession of the land and to use and occupy it as its owner, or did he have to wait for possession until after confirmation by the deputation or the assembly?

Ans. He was most certainly entitled to enter into possession immediately after receiving the governor's title; and so far from having to wait for judicial possession or for the approval of the deputation or departmental assembly, I have known numerous instances in which neither the one nor the other were asked for, for many years.

Quest. 4th. According to those usages and customs, to whom did it belong to bring the concessions of land before the bodies you have mentioned for approval?

Ans. It was always considered the duty of the governor to do that, and I know from my own knowledge that whilst the deputation was held in Monterey the governor always did so. I never knew of any grantee interesting himself about getting the approval of his title, until it was rumored that the Americans were coming to take possession of the country. But then I know that, by the advice of the American citizens residing in California, many title holders in the neighborhood of Monterey sent to Los Angelos to get their titles approved by the assembly. This rumor of the Americans coming was in 1845.

Quest. 5th. According to those usages and customs, were the possessions which were taken under the grants of the governor respected and considered lawful by the government and the public?

Ans. They were always, to the best of my recollection, so considered and respected.

Quest. 6th. Do you know whether there was a civil revolution in the latter part of 1836 in California, by which the existing government was deposed and an independent or revolutionary government attempted to be established?

Ans. Such a state of things did take place somewhere about the time mentioned in the question.

Quest. 7th. For what number of years immediately before the conquest or acquisition of Alta California by the Americans did the customs and usages you have spoken of prevail?

Ans. These customs prevailed as much as eleven or twelve years before the acquisition of the country by the Americans.

Questions by the United States law agent.

Quest. 1st. Do you consider it to be the duty of the political chief or governor only to present the title to the deputation, or junta, or assembly?

Ans. I have always so considered it, and I believe it to have been the general opinion of the inhabitants of the country.

Quest. 2d. Do you believe, or was it generally believed, that the governor or political chief was bound in duty to present every title which had been granted to the deputation, junta or assembly for confirmation?

Ans. I believe, and it was generally believed, that the governor, or the government secretary under his direction, was in duty bound to have every title granted presented to the deputation, junta or assembly for approval.

Quest. 3. Do you believe, or was it generally believed, that the governor or political chief was obliged to present a title which he might regard as having been improperly granted, or as being injurious to the country?

Ans. As far as regards myself, I believe it was the duty of the governor to forward every title granted to the deputation or assembly for its approval or disapproval.

(Signed) WM. E. P. HARTWELL.

The law agent being present, sworn to and subscribed before me, this 28th of April, 1852.

(Signed) HARRY J. THORNTON, *Comm'r.*

Filed in office, April 28th, 1852.

(Signed) GEO. FISHER, *Sec'y.*

El ciudadano Melchor Muzquiz, coronel de ejercito temiente, coronel mayor del regimento nationales de esta ciudad y temiente gobernador del estado libero de Mexico.

El ex'mo, sr., ministro de relationes interiores y exteriores confecha de 18 del corriente me ha dirigido el decreto seguiente.

Num. 72, Enro. sr. El Supremo Poder Ejecutivo me ha dirigido el decreto que signe.

El Supremo Poder Ejecutivo, nombrado provisionalmente por el soberano Congresso, general constituyente a todas lasque las presentes vieren y entendieren sober que en el mismo soberano Congresso ha decretado lo que signe.

El soberano Congresso general constituyente de las Estados Unidos Mejicanos ha tenido a bien decretar.

1st. La nacion Mejicana apece a las extrangeros que vengan a establicirse en su territorio en segandale en sus personas y en sus propriedades contalque se sujeten a los leges de lpais.

2. Son objetos de esta ley aquellas terrenas de la nacion que no siendo de propriedad particular ni pertinecientes a ningana corporacion ó puebla purden au colonizados.

3d. Para este efecto los Congressos de los Estados formaran a la mayor brevidad las leges a reglamentas de colonizacion de su respectiva demarcacion conformandose entodo a la acta constitutiva, constitution general y reglas establicidos en este ley.

4. No podran colonizarse las territorias comprendidos entre las viente leguas limitrofes con cualquiera nacion extrangera ni diez littorales sin la previa aprobacion del Supremo Poder Ejecutivo General.

5. Si Para la defensa o segaridad de la nacion el gobierno de la federacion turiese por conveniente hacer uso de alguna porcion de estos terrenos para construir almacenes, arsenales a otro edificios publicas prara verificas le con la aprobacion del Congresso general y en su re ceso con la del Congresso de gobierno.

6. No se podra antes de cuatro anos des de la publicacion de esta ley imponer derecho alguno por la entrada de las personas de los extrangeros que nengan a establicer se por primera vezen la nacion.

7th. Antes del ano de 1840 no podrar el Congresso general prohibir la entrada de extrangeros a colonizar a no serque circumstancias imperiasas lo obligaen a ello con respecto a los indiridaons de algana nacion.

8th. El gobierno sin prejudicar el objeto de esta ley tomard las medidas de precaucion que jusque oportunas para la seguridad de la federacion, con respecto los extrangeros que vengan a colonizar.

9th. Debera etenderse con preferencia en la distribucion de tierras a los ciudadanos Mejicana y no se hara distincion alguna entre ellas sin mercamente aquella queden deracha los meretas particulares y servicios hechos a la patria o en igualidad de circumstancias la recuidad en el lugar a que pertinecen los terrenos que se reparten.

10th. Los militares que con aneglo a la oferta de 27 de Marzo, 1821, tengan derecho a tierras sevan atendidos en las Estados en vista de los diplomas, que al efecto les libre el supremo poder ejecutivo.

11. Si por los decretos de capitalizacion segun las probabilidades de la vida el supremo poder ejecutivo, tuvies se oportuno enagenar alganas por ciones de tierras ni favor de cuales quiera empleados asi militares como civiles de la federacion podra verificar lo en las valdios de los territorios.

12. No se permitivo que se reuna en mia sola mano como propriedad mas decemar legua cuadrada de cinco mil varas de tierra regadio cuatro de superficie de temporal y seis de superficial de abrevadero.

13. No podran los nuevas pobladores pasar sus propriedades a manas muertas.

14. Esta ley garantiza a las contratas que los empresarios celebraun con las familier que traigan a sux expensas siempre que no sean contrarios a llas leyes.

15. Ningano que a vertud de esta ley alquiera tierras en propriedad podrar conservar las estando areciudado fuera del territorio de la republica.

16th. El goberno conforme a los principios establicidos en esta ley procedera la colonizacion de las territorias de la republica.

La tendra entendido el supremo poder ejecutivo y dispondra lo necessaria a su complimiento haciendo lo impremir publicar y circular.

Mexico, 13 de Agosto, de 1824.—4°—3°.

CAYETANA IBANA, *Presidente.*
PEDRO ABUMADA, *Diputado secretario.*
MANUEL DE VILLE Y COSIO, *Diputado secretario.*

Por tanto mandamas a todos las tribunales justicias gifes gobernadores y demas autoridades asi civiles como militares y ecclesiasticas de cualquiera clase y dignidad que guarden y hagan guardar complir y ejecutar el presente decreto en todas sus partes, tendres lo entendido para su complimiento y dispondreis se impun a publique y circule en Mexico a 18 de Agosto, de 1824.

NICOLAS BRAVO,
Presidente.
VICENTE GUERRERO,
MIGUEL DOMINGUES,
A. D. LUCAS ALAMAN.

Y lo commirco a V. E. para su intelligencias y cumplimiento.

Y para lleque a noticia de todos mando se publique por bando en esta capital y en las demas ciudades, Villas y lugares del distreto de mi cargo fijandose en los parages a costumbrados y circulandose a quienes loque cindar se su observancia.

Dado en Mexico, a 23rd de Agosto, de 1824.

MELCHOR MUZQUIZ.
MANUEL DE AGAINE,
Official primero.

Document marked "D," offered by the U. S. law agent as evidence in behalf of the U. States.

(Sd.) GEO. FISHER, *Sect'y.*

Filed in office, June 16th, 1852.

Translation.

Citizen Melchar Muzquiz, colonel of the army, senior lieutenant colonel of the regiment of the militia of this city, and lieutenant governor of the free State of Mexico.

His excellency, the minister of foreign and home departments, under date of 18th instant, has transmitted to me the following decree:

No. 72.

EXCELLENT SIR: The supreme executive power has transmitted to me the following decree:

The supreme executive power appointed provisionally by the sovereign general constituent congress, to all who these presents may see or hear. Know ye, that the said sovereign congress has decreed the following:

The sovereign general constituent congress of the Mexican United States has deemed it expedient to decree:

1st. The Mexican nation offers to those foreigners who may come to establish themselves in its territory security in their persons and property, provided that they submit to the laws of the country.

2nd. Those lands of the nation which are not the property of any

individual, corporation, or town, are the subject of this law, and they may be colonized.

3rd. For this purpose the congresses (legislatures of the States) will, with the least delay, enact the laws or regulations for colonizing within their respective boundaries, conforming in all respects to the constitutive act, the general constitution, and the rules established in this law.

4th. The lands embraced within the twenty leagues bordering on any foreign nation, within the ten litoral leagues, cannot be colonized without the previous approbation of the supreme executive power.

5th. If the government of the federation should deem it expedient to make use of any of these lands for building store-houses, arsenals, or other public buildings for the defence or security of the nation, it can do so with the approbation of the general congress, and during its recess with that of the government council.

6th. No tax can be levied on the persons of foreigners who may come to settle for the first time within the nation, before the expiration of four years from the date of this law.

7th. The general congress cannot prohibit the entrance of foreigners for colonizing before the year 1840, unless imperious circumstances may compel it thereto in relation to individuals of some nations.

8th. The executive, without prejudicing the object of this law, will adopt such measures of precaution as may be deemed expedient for the security of the nation, relative to foreigners who may come to colonize.

9th. The Mexican citizens shall be attended to in preference in the distribution of lands; there shall be no distinction made among them, except such only as the particular merits and services rendered to the country may give a right, or, in equal circumstances, the residence of the place to which the lands which may be distributed may appertain.

10th. The military men who, according to the offer of the 27th of March, 1821, may have right to lands, shall be attended to in the State by presenting the warrants which for that purpose the supreme executive power may issue to them.

11th. Should the supreme executive power deem it expedient by the decrees of capitalization according to the probabilities of life, to alienate some portions of the land to any employees of the federation, military or civil, it may do so of the vacant lands of the territory.

12th. It shall not be permitted, there shall be united in one hand more than one square league of five thousand varas of land susceptible of irrigation, or superficies of four leagues of temporal, (dependent on the rains,) and a superficies of six leagues of pasture lands.

13th. The new settlers shall not be competent to pass their property in mortmain.

14th. This law guaranties the contract which the empresarias may make with the families which they may bring at their expense, provided they be not contrary to the laws.

15th. No person who shall by virtue of this law acquire lands as property shall continue to hold the same, being a resident without the republic.

16th. The executive shall proceed, in conformity with the principles established in this law, to the colonization of the territories of the republic.

The supreme executive power shall take cognizance of this, and shall do what is necessary for its fulfilment by causing the same to be printed, published, and circulated.

Mexico, August the 18th, 1824—4–3.

CAYETANA YBANA,
President.
PEDRO DE AHUMADA,
Deputy and Secretary.
MANUEL VILLAY COSIO,
Deputy and Secretary.

We therefore command all the tribunals, judges, chiefs, governors, and the other authorities, civil, military, and ecclesiastical, of whatsoever class or grade they be, to keep, and cause to be kept, comply with, and execute this present decree in all its parts. Know ye, for its fulfilment, and cause the same to be printed, published, and circulated.

Mexico, August 18th, 1824.

NICOLAS BRAVO, *President.*
VINCENT GUERRERO,
MIGUEL DOMINGUEZ.

"To Don Lucas Alaman."

And I communicate the same for your excellency's information and compliance.

And that it may come to the knowledge of all, I command the same to be published as an edict in this capital, and the other cities, towns, and places of the district under my charge, and to be posted up in the customary places, and to be circulated to whom its fulfilment appertains.

Given in Mexico on the 23d of August, 1824.

(Signed) MELCHAR MUZQUIZ.
(Signed) MANUEL DE AGUERRE,
Chief Clerk.

I certify the foregoing to be a true and correct translation made by me from an authenticated copy of the original Spanish document on file in the office of the U. S. surveyor general for California, which authenticated copy is on file in this office, in case No. 56, Cruz Cervantes, for the rancho of San Joaquin alias "Rosa Morada," filed June 16th, 1852.

(Signed) GEO. FISHER, *Sec'ty.*

Office of the Surveyor General of the
United States, for the State of California.

I, Samuel D. King, surveyor general of the United States, for the State of California, and as such now having my office and under my

charge and control a portion of the archives of the former Spanish and Mexican Government or Department of California, do hereby certify, that the annexed page of tracing paper (which is verified by my initials S. D. K.,) exhibits a true and accurate copy of a certain paper or document on file, and forming part of the said archives in this office.

In testimony whereof I have hereunto signed my name officially, and affixed my private seal, (not having a seal of office,) at the city of San Francisco, California, this 1st day of June, A. D. 1852.

(Signed) SAM'L D. KING, *Sur. gen'l, Cal.*

Document marked "E," offered by the United States law agent, as evidence in behalf of the United States.

Filed in office June 16th, 1852.

GEO. W. FISHER, *Secretary.*

Sesion del dia 9 *de Abril.*

Leida y aprobado el de las session anterior se dio cuenta con una proposicion del Sr. Jimeno pa que se solicita la suprema aprobacion de las terrenos que se han concedido, ni las leguas dias litorales y las que se reconocion por de las missiones ya acordo que pase a la comision de agricultura, con loque se levinto la sesion publica para entradir en secreta de reglamente. No assistiendo los S'res Carillo y Requena por enformidad.

MANUEL JIMENO, *Presidente.*

JOSE Z. FERNANDEZ.

Sesion del dia 28 *de Abril.*

Se dia primera lectura al dictamen de la comision de agricultura sobre la solicitud de la suprema aprobacion de terrenas litorales y de missionés que se han concedido a varios particulares.

MANUEL JIMENO, *Presidente.*

JOSE Z. FERNANDEZ.

Sesion del dia 1*st de Mayo.*

Leida y aprobada el acto anterior se puso a discusion y fue aprobado asi ni su totalidad como ni lo particular cada mio de los dos articulos de que constar el dictamen de la comision de agricultura relativo a que se solicite del Supremo Gobierno la aprobacion de las terrenas litorales, y conocidas por de missiones que ha dado al departmento a varios particulares.

MANUEL JIMENO, *Presidente.*

JOSE Z. FERNANDEZ.

OFFICE OF THE SURVEYOR GENERAL OF THE UNITED STATES FOR CALIFORNIA.

I, Samuel D. King, surveyor general of the United States for the State of California, and as such now having in my office and under my control a portion of the archives of the former Spanish and Mexi-

can Territory or Department of Upper California, do hereby certify, that the three preceding and hereunto annexed pages of tracing paper, marked 1, 2, and 3, and each of which is verified by my initials, (S. D. K.,) exhibit true and accurate extracts from the journal of the public sessions of the departmental council or junta from the year 1840, which is on file and forms part of the said archives in this office.

In testimony whereof I have hereunto signed my name officially and affixed my private seal, (not having a seal of office,) at the city of San Francisco, California, this 7th day of June, 1852.

(Signed) SAMUEL D. KING,
Sur. gen'l, Cal.

Translation.

Session of the 9th day of April.

Having read and approved the act of the preceding session, a report of the same was made, with a proposition introduced by Sr. Jimeno in regard to soliciting the supreme approval of the lands granted within the ten litoral leagues, and of those acknowledged as pertaining to the missions, which was ordered to be referred to the committee on agriculture, after which the public session was closed in order to enter into a secret session, according to regulations. Senares Carilla and Pequena were not present on account of illness.

(Signed) MANUEL JIMENO,
President.

(Signed) JOSE Z. FERNANDEZ.

Session of the 28th day of April.

The opinion of the committee on agriculture, relative to soliciting the supreme approval to the litoral and mission lands granted to several individuals, was read for the first time.

(Signed) MANUEL JIMENO,
President.

(Signed) JOSE Z. FERNANDEZ.

Session of the 1st day of May.

The reading of the preceding act having been approved, it was then submitted for discussion, and each of the two articles contained in the opinion of the committee on agriculture, relative to the solicitation of the supreme government for its approval of the litoral and mission lands donated by the Departmental Government to several individuals, were approved in their general as well as their particular bearings.

(Signed) MANUEL JIMENO,
President.

(Signed) JOSÉ Z. FERNANDEZ.

OFFICE OF THE BOARD OF COMMISSIONERS
OF CALIFORNIA LAND CLAIMS.

I certify the foregoing to be a true translation from the Spanish document filed in this office in case No. 56.

(Signed) GEO. FISHER,
Secretary.

(F.)

Yndice de los terrenos adjudicados y personas a quienes se les ha concedido.

San Joaquin.	C.	A Dn. Cruz Cervantes.	156	

En este indice hay el numero de 433 expedientes, pero por equivocacion se paso en la numeracion del 329 al 340, habiendo seguida en la misma.

MANUEL JIMENO.

OFFICE OF THE SURVEYOR GENERAL OF CALIFORNIA,
AND OF THE UNITED STATES.

I, Samuel D. King, surveyor general of the United States for the State of California, and as such now having in my office a portion of the archives of the former Spanish and Mexican territory or department of Upper California, do hereby certify, that the above and foregoing is truly taken from a document designated as "index of land titles," which is on file and forms part of said archives in this office.

In testimony whereof I have hereunto signed my name officially and affixed my private seal, (not having a seal of office,) at the city of San Francisco, Cal., the 4th of June, 1852.

(Sd.) SAMUEL D. KING,
Sur. Gen'l, Cal.

San Francisco, Cal., 29th June, 1852.

Translation.

Index of the tracts of land adjudicated, and of the persons to whom they have been granted.

San Joaquin.	Granted.	To Don Cruz Cervantes.	156	

There are in this index 433 expedientes, but by mistake the numeration runs from 329 to 340, which error continues to the end.

(Signed) MANUEL JIMENO.

OFFICE OF THE BOARD OF COMMISSIONERS
OF CALIFORNIA LAND CLAIMS.

I certify the foregoing to be a correct and true translation from the Spanish document filed in office.

(Signed) GEO. FISHER, *Sec'ty.*

San Francisco, July 1st, 1852.

(G.)

SURVEYOR GENERAL'S OFFICE,
SAN FRANCISCO, CAL., *29th June*, 1852.

SIR: In compliance with your request, I have to state, that upon examining the archives in this office, it does not appear that there is among them any book, journal, or record purporting to show the complete proceedings of the territorial deputation of California for any month of the year 1836.

Very respectfully, sir, your obedient servant,

(Signed) SAMUEL D. KING,
Sur. Gen., Cal.

WM. CARY JONES, esq., present.

A.

Sello tercero—Dos reales.

Habilitado provisionalmente por la administracion de la aduana maritima de Monterey, de la Alta California, para las añas de mil ochocientos trienta y cuatro y mil ochocientos cuarenta y cinco.

A. RAMIREZ.

FIGUERRA.

MONTEREY,
S'bre 22, de 1835.

De conformidad de las leyes de la materia informe el ayuntamiento de esta capital si el interesado ni esta instancia obtiene los requisitos prevenidos pa ser atendido en esta solicitud si el terreno que pretende esta comprendido en las veinte leguas limitrofes ó dez litorales que espresa la ley de 18 de Agosto de 1824, se es regadio, temporal, abrevadero se pertinese a la propiedad de alguna mision ó corporacion ó puebla, con todo lo demas que crea.

A illustra la materia ebacundas estas diligencias pasara este espe-

S'OR GEFE POLITICO.

El Ciud'o Cruz Cervantes ave ciudadano en este territorio con el debido respeto hago a U. S. presente que hallandome con el numero de dos cientos cabezas de ganado ba ano de mi propriedad y decidido a fomentar el giro de su cua como el mas productiva en este su lo de mi sitio propio en que poder poner en ejecusion mi empresa, en tal concepto y segaro de estar de so ocupado y sin destino por consig'le valdio el parage nombrado Sn. Joaquin situado entra Santa Ana y garda al sur Sn. Felipe al Norte, el llano de San Juan al poniente y al anente

diente al y mayor domo de San Juan Bautista pa que esponga lo que le occurra el particular El Sr. Dn. José Castro primer vocal de la E. diputasion territorial y gefe S. politico interimo de la Alta *Alta* California, asi lo mando, decreto y firmo de que doi fee.

JOSÉ CASTRO.

F'co del Castillo Nigrete,
S'rio.

las lomas pertinecientes al mismo sitio esendo este de dos leguas de largo y una de ancho espero se serva V. tenerme por presentado y considerme la posecion del mencionado sitio protestando formar el diseno correspondente y presentando con su correspondiente descripcion a este Gobierno para que previas las trametes de estilo se me ajudique y deposecion del repetido sitio.

Portanto, A. V.

Y suplico se servar neandar como llevo pedido en lo que recibire gracia.

Monterey, *Sept'bre* 10, *de* 1835.

Amego del interesado por no saber firmar.

JOSÉ PABLO DIAS.

Sello tercero—Dos reales.

Habilitado provisionalmente por la administracion de la aduana maritima de Monterey, de la Alta California, para las años de mil ochocientos treinta y cuatro y mil ochocientos treinta y cinco.

FIGUERRA,
A. RAMIREZ.

S'or Gefe Sup'r Politico.

El ciudadano Cruz Cervantes, con el debido respeto hijo á V. S., presente que habiendo ofrecido ni my anterior, escrito el presentar diseno del sitio de San Joaquin, que en el tengo pedido como lo puvienen las leyes de la materia lo berifico á hora acompanando á presente el indicado diseno para que teniendome V. S., por presentado en todo firma y habiendo complido con las requisitas prevenidos en todas seis partes se digne despues concedido el terreno que solicito se me de la correspondente posecion de el con las todas formas que legales prevenidas pa el caso siendo la demarcacion que indicum las limites del citado terreno tirando una limita recte de norte á sur de legua y media de largo desde el arroyo sin agua y esta y esta frenta del de San Felipe, hasta pasar una cienguita que esta en direccion de las lomas de Santa Ana, y una legua de poniente á oriente desde la linear y senala el llano de San Juan, hasta las lomas altas de San Joaquin serviendo de limite entre el terreno que pido y el rancho de San Felipe el mismo arroyo sin agua, en cuyos terminos.

A V. S. suplico se digne mandar como lleno pedido por ser asi de justicia ni loque tambien recibere gracia.

Monterey, 20th Septembre, 1835.

ARENEGO DE CRUZ CERVANTES,
Hizolo.

MANUEL MA. GONZALES.

Septembre 3, 1839.

En sesion de esta dia pasa á la comision de terrenos valdios.

DAVID SPENCE.
JOSEMARIA MALDONNADO, *S'rio.*

[Herein comest the (desino) map.]

[For plat see original, between pages 164 and 167.]

Sello tercero—Dos reales.

Habilitado provisionalmente por la administracion de la aduana maritima de Monterey, de la Alta California, para los años de mil ochocientos treinta y cuatro y mil ochocientos treinta y cinco.

FIGUERRA.
A. RAMIREZ.

Y ayuntamiento la comision de terrenos valdios ha vesta la solicitud que hace el C. Cruz Cervantes, para quc se la concedida el parage nombrado San Joaquin, cuyo espediente pase a informe á esta corporacion y en complymp'to al sup'or decreto de 22 del pp'do informa y el interesado obtiene las requisitos prevenidos para ser attendido en su solicitud que el terreno que pretende no esta comprendido en las treinte leguas limitrofes y sien las litorales que espresa la ley de 18 de Agosto, de 1824, que es de temporal y abrevadero y que se save pertinese á la mision de San Juan Bautista. Por lo ecspuesto presentar á la deliveracion de este. Y ayuntamiento la siguiente proposicion.

Puede concederse al Cruz Cervantes parage lumbrado San Joaquin, si no hay obiso por la mision de San Juan Bautista á quien pertinesce.

Monterey, Octubre 5, de 1839.

JOSE JOAQUIN GOMEZ,
MIGUEL ARELA.

Monterey, Octubre 10, de 1839.

En sesion de esta dia aprovo el y ayuntamiento de este capital el antecedente dictamen y se acordo pase el espediente el mayor domo de San Juan Bautista en complimp'to del sup'or decreto que antecede.

DAVID S. SPENCE,
JOSE MARIA MALDONNADO, *S'rio.*

PUEBLO DE SAN JUAN BAUTISTA, *Abril* 19, 1835.

Puede adjudicarcele el sitio y pretente el interesado del parage San Joaquin á las lomas sin locar al roblar que es donde agosta de el ganado de esta mission.

JOSE TIBARCIO CASTRO.

MONTEREY, *Decembre* 4, *de* 1839.

Pase el alcalde de esta capital ante.

Sello tercero—Dos reales.

Habilitado provisionalmente por la administracion de la aduana maritima de Monterey, de la Alta California, para los años de mil ochocientos treinta y cuatro y mil ochocientos treinta y cinco.

CASTRO.
ANGEL RAMIREZ.

Quien la parte de Cruz Cervantes, produsira una informasion de tres testicos idoneos que seran interrogados sobre las puntos siguientes.

1st. Si el solicitante es Cn. Mexican por nacimiento si es casado y tierre hijas é si es de buena conducta.

2d. Si el terreno que pretende pertenece se á la propriedad de algun particular corporacion á pueblo, si es de regadio temporalo abrevadero é que estension tendra.

3d. Si tierre bienes de campo con que ó poblar lo ó probabilidad de adquirir las ebacuadas estas diligensias vuelva el espediente pa su resolucion. El S'or D. Jose Castro vocal de la e'ma diputasion territorial ó gefe politico interimo de la Alta California asi lo mando, decreto y firmo de que doi fee.

JOSE CASTRO,
F'CO DEL CASTILLO NIGRETE.

Derechos, 4 p's. (Rubrica.)

MOTEREY, *Enero* 14, *de* 1836.

Notifique se al interesado en este presente los testigos que se han de ecsaminar sobre los puntos á que se el superior decreto que antecede, recivase la informacion que se pede y concluda devielvase el espediente al Sr. gefe sup'r. politico, para los efectos que hayar lugar asi yo ciudano, Jose Ramon Estrada, alcalde constitucional en la demarcacion de este y ayuntamiento lo decrete mande y firme con los de assistencia.

F. JOSE R. ESTRADA.

De assa.—JOSE MARIA MALDONNADO.
De assa.—JOSE ANTONIO ROMERO.

En la fecha presente Cruz Cervantes, se le notifico el auto que antecede, y entendido dijo lo ay'e y que presentar por testigos á los ciud'os

Francisco Pacheco, Jose Ma. Herrera, y Francisco Javier Castillo, y no firmo por no saber lo heciyo y las de assa.

Aa. ESTRADA.

De assa.—JOSE MA. MALDONNADO.
De assa.—JOSE ANTONIO ROMERO.

Sello tercero—Dos reales.

Habilitado provicionalmente por la administracion de la aduana maritima de Monterey, de la Alta California, para los años de mil ochocientos treinta y cuatro y mil ochocientos treinta y cinco.

CASTRO,
ANGEL RAMIREZ.

En el puerto de Monterey á los catorce dias del mes de Enero, de mil ochocientos treinta y seis, presente el C. Francisco Pacheco, le recivi yo el alcalde, juramento que hizo en forma de derecho bajo el cual aprecio decir verdad en loque supiere y fulse preguntado y siendolo por su nombre, edad estado, patria y religion. dijo llamarse como queda dicho que es casado de cuarenta y cuatro añas natural de la capital se Talisco y C. A. R.

Preguntado. Por el tenor del interrogatorio que contiene el superior decreto de 4 de Dec'bre, del año pp'do dijo.

Aloi 1o. Que es solicitante es comd't Mexicano por nacimiento, que es casado y tierre hijos y es de buena conducta y responde.

Aloi 2o. Que no pertenece á ningun particular el terreno que solicitar ni á pueblo, ni mision que es de temporal y abrevadero y que su estension puede su de un poco mas de una y media legun y contesto.

Alo. 3o. Que si biene tierre de campo que lo dicho es la verdad ó cargo, del juramento que tierre hecho es el que se afirmo y ratifico, luda que le fue esta su declaracion y la afirmo con mijo y los de assa.

Lo testado no Ve.

F. JOSE R. ESTRADA,
FRANCISCO PEREZ PACHECO.

Assa.—JOSE M'A MALDONNADO.
De assa.—JOSE ANTONIO ROMERO.

En la misma fecha presente el C. Jose M'a Herrera, se le recivio juramento y hizo en forma de derecho bajo el cual aprecio decir verdad en loque supiere y fuere preguntado y sindo lo por su nombre estado edad, patria y religion dijo, llamarse como dicho es, que es casado de cuarenta años natural de Guanajuato y C. A. R.

Preg'do. Por el mismo estilo que lo fuer el primo testijo dijo.

Alo. 1st. Que es ciudadano Mexicana, por nacimiento, que es casado y tierre hejos y es de buena conducta y responde.

Alo. 2d. Que entiende no pertenese a ningun particular o Pueblo ni mision el terreno que solicita.

Sello tercero—Dos reales.

Habilitado provicionalmente por la administracion de la aduana maritima de Monterey, de la Alta California, para los anas de mil ochocientos treinta y cuatro y mil ochocientas treinta y cinco.

CASTRO,
A. RAMIREZ.

Que es de temporal y abrevadero y que su estension es de legua y media y contesto.

Alo. 3d. Que sare tierre ganado para poblar lo y bastantes caballas, que lo dicho es la verdad a cargo del juramento que tierre hecho en el que se afermo y ratifico leida que le fue su declaracion y la firmo conmigo los de assa.

JOSE MA. HERRERA,
De assa.
JOSE ANTONIO ROMERO.

F. Jose R. Estrada,
De assa.
Jose Maria Maldonado.

En la misma f'ha presente el C. Francisco Javier del Castillo se le recivio juramento en forma de derecho por el cual aprecio decir verdad en loque supiere y fuere pregantado y siendolo por sunambre estado, edad, patria y religion dejo, se llamar como que da referido que es saltero de treinta y dos anos, su patria la capital de Mexico y Catolic A. R.

Preg'do. Por el orden que lo fueron las das antecedentes testegos dijo.

Alo. 1. Que si es Mejicano por nacimiento que es casado, tierre hijos y es de buena conducta y responde.

Alo. 2d. Que no pertinesce a ningun particular mision ni pueblo el terreno que solicita, quies de temporal y su estension poco menos de das leguas y contesto.

Alo. 3d. Que tierre las das circumstancias del tenor de la pregantar, que lo dicho es la verdad a cargo del juramento que tierre hecho en el que se afirmo y ratifico leida que le fue su declaracion y lo firmo commijo y los de assa.

FRAN'CO DEL CASTELLO NIGRETE.
De Assa.
JOSE ANTONIA ROMERO.

F. Jose R. Estrada.
De Assa.
Jose R. Maldonnado.

Sello tercero—Dos reales.

Habilitado provicionalmente por la administracion de la aduana

maritima de Monterey, de la Alta California, para los anos de mil ochocientos treinta y cuatro y mil ochocientos trienta y cinco.

CASTRO,
ANGEL RAMIEREZ.

En la f'ha concluda la informacion que sepide en el antecedente superior decreto la demeba el espediente original al s'or gefe superior politico en complimiento de la mandado en auto de esta f'ha para constancia la puse por nota que rubrico.

A. R. ESTRADA.

MONTEREY, *Abril* 1, *de* 1836.

Vista la peticion con que de principio este espediente el informe de la autoridad municipal y todo lo demas que se turo presente ener combino de conformidad a las leyes y reglamentos de la materia a se declara dueno en propriedad del terreno conosido con el nombre de San Joaquin, al C'no Cruz Cervantes a reserva de la aprovasion de la ex'mo diputasion el Sr. Don Nicholas Gutierrez, tente cor'l comd'te gral y inspector y gefe politico interim asi lo mando, decreta, y firmo, de que doi fee.

NICOLAS GUTIERREZ.
F'CO DEL CASTELLO NIGRETE, *S'rio.*

En 31 de Mayo pasa a la com'n de terrenos.

MALDONNADO, *S'rio.*

EX'MO S'OR: La comision de terrenos baldios impuesto del esp'd'te que se mandar practicar a peticion del Ciud'o Cruz Cervantes, del parage nombrado San Joaquin, y no en contrando en el objecion alguna que hacer sienido en todo conforme al auto. 5 del reglam'to de 21 de No'bre de 1828, y a ley de 18 de Agosto de 1824, apece a la deliveracion de V. E. la seguiente proposicion se aprueba la consecion hecha al Ciud'o Cruz Cervantes del parage nombrado S'n Joaquin, en 1 de Abril de presente ano.

Monterey, 6 de Julio, de 1836.

JOSE A DE LA GUERRA Y CARILLO.
JOSE JOAQUIN GOMEZ.

En 12 de Julio, volvio a la comision de terrenos pa su reforma.

MALDONNADO, *S'rio.*

OFFICE OF THE SURVEYOR GENERAL OF THE
UNITED STATES FOR CALIFORNIA.

I, Samuel D. King, surveyor general of the United States for the State of California, and as such now having in my office and under my charge and control a portion of the archives of the former Spanish and Mexican territory or department of Upper California, do hereby certify that the seventeen preceding and hereunto annexed pages of

tracing paper numbered from one to seventeen inclusive, and each of which is verified by my initials (S. D. K.), exhibit true and accurate copies of certain documents on file, and forming part of the archives in this office.

In testimony whereof I have hereunto signed my name officially and affixed my private seal, (not having a seal of office,) at the city of San Francisco, California, this 15th day of March, 1852.

[L. S.]

(Signed) SAMUEL D. KING,
Surveyor general, California.

Translation.

MONTEREY, *Sept. 22d*, 1835.

In conformity with the laws on the subject, let the ayuntamiento of this capital report, whether the interested party in this instance possesses the requisite qualifications to be considered in his petition; whether the land he claims is within the 20 border or ten litoral leagues mentioned in the law of 18th August, 1824; whether the land is irrigable, temporal, or contains watering places; whether it belongs to any mission, corporation or pueblo, (settlement,) with everything else that may serve to elucidate the matter; after which shall have been accomplished let this expediente be transmitted to the major domo of San Juan Bautista, that he may state whatever he may deem relevant in this particular.

Senor Don Jose Castro, senior member of the excellent territorial deputation and political chief ad interim, thus did command and sign, all which I attest.

JOSE CASTRO.

F'co del Castillo Nigrete.

To his honor the Political Chief:

Citizen Cruz Cervantes, a *a* resident of this territory, with due respect to your honor, represents that owning two hundred head of neat cattle, and being anxious to dedicate myself to the rearing of the same as the most productive branch of business in this soil, I am in want of a suitable place to carry my undertaking into effect. For this purpose I would request that in compliance with my petition you would be pleased to grant me the place called San Joaquin, assured as I am that said place is unoccupied, without object, and consequently vacant (valdeo.) Said land being bounded by Santa Ana which is on the south, San Felipe on the north, the plain of San Juan on the west, and by the hills of the said place on the east, and is of two leagues in length by one in width, the proper plat of which I shall make, and present it with the corresponding description to this government, in order that with all the usual forms the possession of the aforesaid place may be adjudicated to me.

Wherefore I request that your honor be pleased to order it as I have petitioned, and for which I shall receive a favor.

MONTEREY, *Sept.* 10*th*, 1835.

At the request of the interested party who knows not how to sign, I hereby affix my name.

JOSE PABLO DEAS.

To the honorable Superior Chief: Citizen Cruz Cervantes with due respect to your honor represents, that having offered in my last petition to present a map of the place called San Joaquin, agreeably to the laws upon the subject, I do so now in this accompanying said map, so that in your acceptance of the same in all due form of law (I having complied with every requirement) you may direct that after the concession of the land I solicit possession of, the same may be given me with all the legal forms as the case may require. The demarcation of the limits of said place is a right line of one league and a half in length, drawn from north to south, from the dry creek opposite that of San Felipe until it passes a little marsh in the direction of the hills of Santa Ana, and one league from east to west from the plain of San Juan as far as the high hills of San Joaquin, the said dry creek separating the land I ask from the rancho of San Felipe. Under such view I request your honor to order as I have petitioned, which being agreeably to justice, I shall also receive as a favor.

MONTEREY, *Sept.* 20*th*, 1835.

At the request of Cruz Cervantes I hereby sign the same for him.

MANUEL MA. GONZALES.

Sept. 3*rd*, 1839.

In session of this day's date it was referred to the committee on public lands.

DAVID S. SPENCE.
JOSE MARIA MALDONNADO, *Sec'ty.*

TO THE ILLUSTRIOUS AYUNTAMIENTO:

The committee on public lands have seen the petition presented by Citizen Cruz Cervantes, for the place called San Joaquin, the proceedings on which were referred to this corporation; and in compliance with the superior decree of the 22nd last past, they report that the interested party possesses the requisites to be heard in his petition; the land he asks for is not within the 20 border, but it is within the 10 litoral leagues mentioned in the law of August 18th, 1824. The same land is temporal and contains watering places, and is known to belong to the mission of San Juan Bautista. For the reasons above expressed they present to the deliberation of this illustrious ayuntamiento the following proposition:

The place called San Joaquin may be granted to citizen Cruz Cervantes, if the mission of San Juan Bautista, to whom it belongs, have no objection.

Monterey, Oct. 5th, 1839.

MIGUEL ARELA.

JOSE JOAQUIN GOMEZ.

MONTEREY, *Oct.* 10*th*, 1839.

In their session of to-day the illustrious ayuntamiento of this capital approved the preceding opinion, and they agreed to refer the *the* expediente to the major domo (Steward) of San Juan Bautista, in compliance with the preceding decree.

DAVID S. SPENCE.
JOSE MARIA MALDONNADO, *Sec'y.*

PUEBLO OF SAN JUAN BAUTISTA,
October 13*th*, 1835. [9²]

The place of San Joaquin petitioned for by the interested party may be adjudicated to him as far as the hills, without touching the oak grove which is the summer pasture land for the cattle belonging to this mission.

JOSE TIBURCIO CASTRO.

MONTEREY, *Dec.* 4*th*, 1839. [9²] 9.

Let the same be referred to the alcalde of this capital, before whom, on the part of Cruz Cervantes, shall be produced on information of three proper witnesses, who shall be interrogated on the following points: 1st. Whether the petitioner is by birth a Mexican citizen; whether he is married and has children, and whether his conduct is good? 2d. Whether the land he petitions for is the property of any private individual, corporation or pueblo; whether the land is irrigable, temporal, or contains watering places, and what is its extent? 3d. Whether he owns any stock to put thereon, or has the means of getting it? After accomplishing which requirements, let the proceedings be returned for a resolution thereon. Señor Don Jose Castro, senior member of the excellent territorial deputation, and political chief ad interim of Upper California, thus did command, decree, and sign, which I attest.

JOSE CASTRO.
F'CO DEL CASTILLO NIGRETE,
Secretary.

Fees, $4 00.

MONTEREY, *Jan'y* 14*th*, 1836.

Let the interested party be notified that the witnesses will be examined on the three points specified in the preceding decree. Let the information asked be received, after which, the proceedings shall be returned to the superior political chief for such purposes as may be deemed proper.

Thus did I, Citizen Jose Ramon Estrada, constitutional alcalde of the district of this illustrious ayuntamiento, decree, command, and sign, together with my assistants.

JOSE R. ESTRADA.

Ass't: JOSE MARIA MALDONNADO.
Ass't: JOSE ANTONIO ROMERO.

On the same day, Cruz Cervantes being present was notified of the preceding decree, which being read, he said that he understood it, and presented as witnesses Citizens Francisco Pacheco, Jose Ma. Herrera and Francisco Javier Castillo. Not signing because he knows not how, I do so together with my assistants.

ESTRADA.

Ass't: JOSE MARIA MALDONNADO.
Ass't: JOSE ANTONIO ROMERO.

At the port of Monterey, on the 14th day of January, 1836, Citizen Francisco being present, I, the alcalde, administered the oath in all due form of law, under which he offered to state the truth to the best of his ability, and on the points he might be interrogated. Having been interrogated as to his name, age, condition, and religion, he said that his name was as had been stated; that he is married; is forty-four years old; is a native of the capital of Talisco, and an apostolical Roman catholic.

Being asked after the tenor of the interrogatory contained in the superior decree of December 4th, of the year last past, he said: 1st. That he, the petitioner, is a Mexican citizen by birth, that he is married, has children, and is of good conduct. 2d. That the land solicited belongs to no private individual, pueblo, or mission; that it is temporal and contains watering places, and in extent it may be a little more than one league and a half. 3d. That he is the owner of stock; that the foregoing is the truth under the oath he has taken, which he affirmed and ratified. After this his declaration had been read to him, signing the same together with myself and assistants.

JOSE R. ESTRADA.

Ass't: JOSE MARIA MALDONNADO.
Ass't: JOSE ANTONIO ROMERO.

On the same day, Jose Maria Herrera being present, the oath was administered to him in due form of the law, under which he offered to state the truth, to the best of his belief, whatever he might be interrogated; and having been asked as to his name, condition, age, country, and religion, he said his name was as has been stated, that he is married, is forty years old, is a native of Guanajuato, and is an apostolic Roman catholic.

Being interrogated after the same manner as the first witness, he said:

1st. That the petitioner is a Mexican by birth, is married and has children, and is of good conduct.

2d. That he understands the land solicited does not belong to any private individual, mission or pueblo, (settlement;) that the same is temporal and contains watering places, its extent being of one league and a half.

3d. That he knows that petitioner has cattle to put thereon, and considerable number of horses; that what he has stated is the truth under

the oath he has taken, which he affirmed and ratified, after his deposition had been read to him, signing the same together with myself and my assistants.

JOSE R. ESTRADA,
JOSE MA. HERRERA.

Ass'ts: JOSE MARIA MALDONNADO,
JOSE ANTONIO ROMERO.

On the same day, Citizen Francisco Javier del Castillo being present, the oath was administered to him in due form of law, under which he offered to state the truth, to the best of his belief, and in whatever he might be interrogated; and having been asked as to his name, country, condition, and religion, he said that his name was as had been stated, is single and of the age of thirty-two years, his country the capital of Mexico, and his religion apostolic Roman catholic.

Being interrogated in the same order as the two preceding witnesses, he said:

1st. That the petitioner is a Mexican by birth, that he is married, has children, and is of good conduct.

2d. That the land petitioned for belongs to no private individual, mission or pueblo; that it is temporal, and its extent of a little less than two leagues.

Third. That he has the requisites mentioned in the question; that what he has stated is the truth under the oath he has taken, which he affirmed and ratified, after his deposition had been read to him, signing the same together with me and my assistants.

JOSE R. ESTRADA.
FRANCISCO DEL CASTILLO NIGRETE.

Ass'ts: JOSE MARIA MALDONNADO,
JOSE ANTONIO ROMERO.

This day the information asked in the preceding superior decree being concluded, let the superior political chief, in compliance with the decree issued this day. In witness whereof, I made a note of it and signed with my rubric. ESTRADA.

MONTEREY, *April 1st*, 1836.

Having examined the petition heading these proceedings, the report of the municipal authority, and everything bearing on the case, in conformity with the laws and regulations in the matter, Citizen Cruz Cervantes is hereby declared owner in fee of the parcel of land known by the name of San Joaquin, subject to the approval of the excellent deputation.

Señor Nicolas Gutierrez, lieut. col., commandant gen'l, inspector, and political chief ad interim, do thus command, decree, and sign, which I attest.

NICOLAS GUTIERREZ.
F'CO DEL CASTILLO NIGRETE,
Secretary.

On the 31st of May this was referred to the committee on lands.
(Signed) MALDONNADO, *Sec'ty*.

The committee on vacant lands, informed of the expediente ordered at the instance of citizen Cruz Cervantes, who solicited the place called San Joaquin, finding no objection whatever against it, and being all in conformity with the 5th article of the regulations of the 21st November, 1828, and agreeably to the law of August 18, 1824, offer to your excellency's consideration the following proposition:

They approve of the concession made to citizen Cruz Cervantes of the place called San Joaquin, on the 1st of April of the present year.

JOSÉ A. DE LA GUERRA Y CARILLO.

JOSE JOAQUIM GOMEZ.

Monterey, July 6th, 1836.

On the 12th of July it was returned to the committee for its reformation.

MALDONNADO, *Sec'ty*.

I certify the foregoing to be a true and correct translation from the Spanish on file in this office.
(Signed) GEO. FISHER, *Sec'ty*.
San Francisco, March 22, 1852.

S. Joaquin por D. Cruz Cerbantes. (*Rubrica.*)

En 31 de Mayo, a la comision de terrenos.

GOMEZ.

En 7 de Julio, volvio de etaminado y se devolvio a la comision por su reforma. (*Rubrica.*)

OFFICE OF THE SURVEYOR GENERAL OF THE UNITED STATES, FOR THE STATE OF CALIFORNIA.

I, Samuel D. King, surveyor general of the United States for the State of California, and as such now having in my office, and under my charge and control, a portion of the archives of the former Spanish and Mexican territory or department of Upper California, do hereby certify that the above and foregoing writing upon this sheet of tracing paper is a true and accurate copy of the writing upon a paper in bundle No. 2, containing acts of the departmental assembly, under a cover entitled "Caspeta gral en la que consisten los de los expedientes pasados a comisiones, May de 1836," on file and forming part of the said archives in this office.

In testimony whereof, I have hereunto signed my name officially, and affixed my private seal, (not having a seal of office,) at the city of San Francisco, Cal., this 15th day of March, 1852.

(S'd) SAMUEL D. KING,
Surveyor General, California.

Translation.

San Joaquin, by D. Cruz Cervantes. (*A rubric.*)

On the 31st May, "to the committee on lands."
(Signed) GOMEZ.

On the 7th of July reported and returned to the committee to re-form the report. (*A rubric.*)

I certify the foregoing to be a true and correct translation from the annexed Spanish document, drawn on tracing paper, and authenticated by Samuel D. King, surveyor general, Cal., on the 15th March, 1852, and on file in this office.
(Signed) GEO. FISHER, *Secretary.*
U. S. Land Commission, San Francisco, July 6th, 1852.

E. S.: La comision de agricutura en cargador de examinar la proposicion presentada por el S'or Jimeno, contraida a pedir la suprema aprovacion de los terrenos que se au concedido y se hallan comprendidos en las diez leguas litorales y las terrenos que se reconocian por de las misiones en cuentra la comicion que la proposicion referida esta fundada en razon y justitia pues quien puede negar que se tome una probidencia tam necessaria como la propuesta y tan conforme a la ley de 18 de Agosto, de 1824, nada mas beneficio puede hacer se a favor de la agricultura que proporcionales a las proprietarios de terrenos su pasificá y segara posecion y por lo tanto la comicion al sentido del S'or Jimeno propone a la deliberacion de esma junta las siguientes proposiciones:

1st. Se aprovera la proposicion con sus articulas que presento el S'or Jimeno en fecha 8 del corriente.

2d. Que en consecuencia se haga la es que se nodica al supremo gobierno para el fue, que se a propuesto.

Sa la de comiciones de la junta en Monterey, a 28 de Abril. de 1840.
JOSÉ RAFAEL GONZALES.
JOSÉ F. CASTRO.

En este dia se le dia 1st lectura.
Aprobado en 1st de Mayo, de
En 13 de Julio, del mismo año se remitto testimonio al E. S. gob'no.

E. S.: La ley de colonizacion de 18 de Agosto, de 1824, puriene en su art. 4, que no podran colonizarse las terrenos comprendidos en las 20 leguas limitropes con cuales quier a nacion estrangera ni 10 litorales sin la preria aprobacion del supremo poder ejecutivo de la nacion y en el reglamento concordante espedido en 21 de No'bre, de 1828, prohibe en su art. 17 colonizar las terrenos que pertinece las misiones hasta que se resuelra se deron considerar se como propriedad de las reduciones de las neafitos, catecumenos y pobladores, Mejicanos.

Ningun terreno valdio de este depart'nto se podiar colonizar conforma a dicha ley y reglamento por que sido es litoral y la mayor

parte de la estencion de dichos terrenos se recocian la propriedad de las misiones, desde la f'ha de la indicada ley y reglamento no se puder conseder a ningun particular terreno algomo por no haberlo permitido las atenciones del gob'no hasta el año de 1834, que en medio de sus necesidades los habitantes de este pais para conseguir unos terrenos incultos que amenicada les produjira su subsistencia y las de sus familias dirijeron sus repetidas instancias al gob'no departmental y esta autoridad mando se formasen los espedientes respetivas para que en conformidad a las ley es y reglamentos de la materia se les fuese dando a los particulares los sitios que se incontrabare en estado de colonizar y hallandose multitud de agrasiador posedores de terrenos que el gobierno les ha consedido espediendoles me titulo en donde se les hara una definitiva consecion recarpudo sobre esta la correspondente aprovacion de la estruguida diputacion y el presente por la junta departmental y es llegado el caso que V. E. pida al sup'mo gob'nor en conformidad a la sus dicha ley y reglam'to la derida aprovacion de tidos los terrenos que se han consedido en este departmento por el gobierno del mismo y a sed de los que se hayan en las 10 leguas litorales ya de los terrenos que se reconasan por de los misiones para que los passedores gasen de una pasifica y segura posecion de sus terrenos y en cuya virtud pida la E. junta tomen en consideracione mis proposiciones sig'tes:

1st. Que se dirigida al sup'mo gob'no de la nacion por esta junta una esposicion contraida a lo que libo manifestado para pedri la aprovacion se las terrenos son sedidos a los particulares por el gob'no de este departm'to y aprovados por la deputacion y junta departmental.

2d. El Ex'mo S. gob'ndor dirijera al sup'mo gob'no una noticia circumstancia de los terrenos consedidos a particulares para su sup'mo conocimiento.

Monterey, 8 de Abril, 1840.

MANUEL JIMENO, *S'rio.*

S'ors Castro & Gonzales: Dada cuenta a la ex'ma junto acordo en sesion del dia 9 del corriente que pase a la comision de agricultura.

JOSÉ Z. FERNANDEZ, *S'rio.*

En 13 de Julio del mismo año se remitio testimonio al E. S. gobernador. (*Rubrica.*)

Office of the Surveyor General of the United States for California.

I, Samuel D. King, surveyor general of the United States for the State of California, and as such now having in my office and under my charge and control a portion of the archives of the former Spanish and Mexican Territory or Department of Upper California, do hereby certify, that the five preceding and annexed pages of tracing paper, numbered from one to five inclusive, and each of which is verified by my initials, (S. D. K.,) exhibit true and accurate copies of certain documents on file and forming a part of the said archives in this office.

In testimony whereof I have hereunto signed my name officially and affixed my private seal, (not having a seal of office,) at
[SEAL.] the city of San Francisco, California, this 13th day of March, A. D. 1852.

(Signed) SAMUEL D. KING,
Sur. gen'l, Cal.

Translation.

EXCELLENT SIR: The committee on agriculture, having in charge to examine the proposition presented by Senor Jimeno, asking for the supreme approval of the lands which have been granted and are contained within the ten litoral leagues, and the lands acknowledged as belonging to the missions, believe that said proposition is grounded on right and justice, because who can refuse the taking of so necessary a measure as the one proposed, and so conformably to the law of the 18th of August, 1824? Nothing more beneficial can be done in favor of agriculture than to procure to the owners of land a peaceful and secure possession thereof; and therefore this committee, being of Senor Jimeno's opinion, propose to the deliberation of the excellent junta the following propositions:

1st. They approve of the proposition and its articles presented by Senor Jimeno on the 8th instant.

2d. Consequently that the aforesaid exposition be made to the supreme government to the intended effect.

Committee hall of the junta, in Monterey, on the 28th April, 1840.

(Signed) JOSE F. CASTRO,
(Signed) JOSE RAFAEL GONZALES.

On this day it was read for the first time. Approved on the first of May.

On the 13th of July of the same year a testimony thereof was transmitted to his excellency the governor.

EXCELLENT SIR: The law of colonization of 18th of August, 1824, reads in its article 4th that the land contained within the twenty bordering leagues with any foreign nation, or within the ten litoral leagues, cannot be colonized without the previous approval of the supreme executive department of the nation. The respective regulation issued on the 21st November, 1828, prohibits, by its article 17th, to colonize the lands occupied by the missions until it may be decided whether they are to be considered as property appertaining to the reserves of the neophytes, catechumens, or Mexican settlers.

According to the said law and regulation, no vacant land of this department could have been colonized, because it is all litoral, and the greatest part thereof is acknowledged as belonging to the missions. Since the date of the mentioned law and regulation no land was granted to any private individual, because the attentions of the government did not permit of it until 1834, when the inhabitants of this country, urged

by their necessities, in order to obtain some untitled lands, which being cultivated would produce for their support and that of their families, addressed their several applications to the departmental government. This authority directed the several expedientes should be formed; that in conformity with the laws and regulations on the subject, the lands considered proper for colonization should be donated to private individuals; and whereas many grantees are now possessors of the land the government had granted them by issuing a patent in virtue thereof, a definite concession has been made unto them with the corresponding approval of the ex-deputation, and now of the departmental junta, the time is already come that your excellency may ask for from the supreme government, in conformity with the said law and regulation, the proper approval of the lands granted in this department by the government of the same, both as to those lands situated within the ten litoral leagues, and those recognised as belonging to the missions, in order that their possessors may enjoy said lands peaceably and with security; in virtue thereof I beg of his excellency, the junta, to take into consideration my following propositions:

1st. That this junta remit to the supreme government of the nation an exposition of what I have manifested, in order to ask for the approval of the lands granted to private individuals by the government of this department, and approved of by the deputation and departmental junta.

2d. His excellency, the governor, will remit to the supreme government a detailed statement of the lands granted to private individuals for its superior knowledge.

Monterey, the 8th of April, 1840.

(Signed) MANUEL JIMENO.

Messrs. CASTRO & GONZALES: This opinion having been presented to the most excellent the junta, in the session of the 9th instant, it was ordered to be referred to the committee on agriculture.

On the 13th July of the same year a testimony thereof was transmitted to his excellency the governor.

(*A Rubric.*)

I certify the foregoing to be a true and correct translation from the Spanish on file in this office.

San Francisco, March 22d, 1852.

(Signed) GEO. FISHER, *Secretary.*

[SEAL.] H.

Disposiciones generales ó reglamento para la colonizacion de las territorios de la republica.

Estando prevenido en el articulo 16 de la ley general de colonizacion de 18 de Agosto, de 1824, que el gobierno conforme á las principios estabiliciros en dicha ley proceda á la colonizacion de las territorias

de la republica y seindo muy oportuno para darse á dicho articulo el mas puntual y esacto complimiento dicta algunas disposiciones generales que faciliten su ejecucion en las casos que bayan occuriendo. El E. S. presidente ha tenido á bien acorder los articulos que signen.

1st. Se autoriza á las gefes politicos de las territorios para que con arreglo á la ley del congresso general de 18 de Agosto, de 1824, y baya las calidades y despues se espresan puedan conceder terrenas baldias de sus respectivos territorios á los empresarios, familias á personas particulares Mejicanos ó estranjeros y lo soliciten con el objeto de cultivarlas ó habetar los.

2nd. Todo pretendiente de terrenos sea empresarios, cabeza de familias ó persona particular se presentara al gefe politico del respectivo territorio por instancia enque se esprese su nombre patria, profession, el numero, naturaliza religion y demas circumstancias de las familias, ó personas conque quien colonizar marcando asi mismo con la distincion pasible y describiendo en un diseno el terrena y solicita.

3rd. El gefe politico procedera desde luigo á tomar el informe y sea hastante sobre si se encuentran ó no en la solicitud las calidades y requiere la citada ley de 18 de Agosto, asi en el terreno como en el pretendiente ya para que se atienda á este sur cellam'te ya para, y se le prefiera oyendo al mismo tiempo á la autoridad municipal respetiva sobre se huilla ó no algan reparo en la concesion.

4th. En vista de todo el gefe politico accedera ó nó á dicha solicitud arroylandose esactamente a las leyes aplicables a la materia con especialidad a la y a citada de 18 de Agosto, de 1824.

5th. Las concesiones hechas a personas ó familias particulares no se tendran por valderos definitivamente sin puria consentimiento de la diputacion territorial dara cuenta al supremo gobierno con el espediente de la materia con su resolucion.

7th. Las concessiones hechas á impresarias para que colonizar con muchas familias no se tendran por valederas definitivamente hasta no obtenen la aprovasion del supremo gobierno, a q'u se dara cuenta con el espediente agregandose a este el informe y pa a la diputacion territorial.

8th. Hecha definitivamente la concesion qe. se solicita se espedera un documento firmado por el gefe politico y serva de titulo al interesado espresandose, ni este y la concession se entiendi con entera confermidad a lo dispuesto por las leyes en cuy a virtud se prasedera a la possecion.

9th. De todas las solicitudes y se presente y concessiones que se hayan quedaran los correspondientes asuntes en un libro distinando al efecto con las dicenos de los terrenos y se concedieren y se pasara al supremo gobierno cada trimestre una nota circumstanciada.

10th. No se podra admitir capitulacion alguna para nueva pablacion sino es q' el capitulante se obligue a presentar en calidad de pobladores a lo menos doce familias.

11th. El gefe politico senarlara al nueva poblador un tiempo proporcionado dentro del cual prensamente debera cultivar ó occupar el ter-

reno en los terminos, y con el numero de personala familias que haya capitulado en el concepto de y no haciendola quedera mul a la concesion del terreno pudiendo sin embargo el gefe politico revalidar la en proporcion a la parte en q. hubieri complido interesado.

12th. Todo nueva poblador despues q. haya cultivado ó ocupar lo el terreno con arreglo a su capitulacion cuedara de justificar lo ante la autoridad municipal pa que haciendose el a siento oportuno consolide y asegare sudro propriedad poblador disponer libremente de ella.

13th. La reunion de muchas familias en una poblacion seguira en su formacion gobierno y poblicia interior las reglas establicidos pr. las leyes, vigentes par las demas poblaciones de la republica teniendose especial ciudado en las nuevas de q. se construen con la posible regalidad.

14th. El minimum del terreno de regadio q. se de para colonizarse por una mano sera de 200 varas en cuadro, el minimum del de temporal sua 800 v's. El minimum del de abrevadero sera de (200 varas.)

15th. El terreno y se de para un solar sera de cien varas.

16th. Los huecos q. quedaren entre las terrenos colonizados podran distribuire entre los poseedores limitrofes q. hayan cultivado con aplicacion las sujos y no hayan recitido toda la estension de terreno q. la ley permitte, ó a los hijos de las mismas poseedores q. los soliciten para concretar las propriedades de sus familias teniendose para este muy presente la moralidad y industria de las interesados.

17th. En los territorias en q. haya misiones los terrenos q. estas ocupan no podran colonizarse por ahora y hasta q. se resuelva se deben considerar se como propriedad de las reduciones de los neofitas, catecumenos y pobladores Mejicanos.

Es copia Mexico, 21st de Noviembre, de 1828. Artiz de la torre.
Corregida. *Una Rubrica.*

Es copia puerto de S. Diego, No'bre 19, de 1829.

AGUSTIN V. ZAMORANO.

OFFICE OF THE SURVEYOR GENERAL OF THE UNITED STATES FOR CALIFORNIA.

I, Samuel D. King, surveyor general of the United States for the State of California, and as such now having in my office and under my charge and control a portion of the archives of the former Spanish and Mexican territory or department of Upper California, do hereby certify that the five preceding and hereunto annexed pages of tracing paper numbered from one to five inclusive, and each of which is verified by my initials, (S. D. K.,) exhibit a true and accurate copy of a certain document on file and forming part of the said archives in this office.

In testimony whereof, I have hereunto signed my name officially and affixed my private seal, (not having a seal of office,) at [SEAL.] the city of San Francisco, California, this 16th day of March, 1852.

(Signed) SAMUEL D. KING,
Surv. gen'l, Cal.

[SEAL.] Translation.

General provisions or regulations for the colonization of the territories of the Republic.

The 16th art. of the general law of colonization of 18th August, 1824, provides that the government, in conformity with the principles therein established, shall proceed to the colonization of the lands of the republic, and it being of moment to issue some general rules to facilitate the execution of said law in cases which may occur, in order to comply punctually and exactly with the aforesaid article, his excellency the President has thought proper to adopt the following regulations:

1st. The political chiefs of the territories are hereby authorized to grant vacant lands, situated within their respective territories, to impresarias, (undertakers or contractors,) families or individuals, either Mexicans or foreigners, who may petition for them with the object of cultivation or settling the same. Said grants shall be made according to the laws of the general of 18th of August, 1824, and under the qualifications hereinafter expressed.

2d. Every petitioner for lands, whether he be an impresario, head of a family, or an individual, shall appear before the political chief of the respective territory by a petition stating his name, country, profession, number, birthplace, religion, and other circumstances of the families or persons whom he may wish to colonize, showing at the same time clearly and distinctly, and describing on a sketch, the land petitioned for.

3d. The political chief shall immediately proceed to take the necessary information, in order to ascertain whether the requirements of said law of 18th of August are embraced in the petition, and whether the petitioner, as well as the land, possess the requisite conditions, so as to attend to the petitioner at once, or to require of the respective municipal authority whether or not there is any objection to the grant.

4th. In view of all these, the political chief will grant or not said petition in strict accordance with the laws on the subject, and especially with reference to the above mentioned law of 18th August, 1824.

5th. The grants made to individuals or families shall not be definitely valid without the previous approbation of the departmental assembly, to which the respective expedientes shall be referred.

6th. If the political chief does not obtain the approval of the territorial assembly, he shall report the same to the supreme government, accompanying the expediente, for its decision.

7th. The grants made to the impresarias who wish to colonize with several families shall not be held definitely as valid until the approval of the supreme government *government* be obtained, to which an account must be given, accompanying the expediente with such report as the territorial assembly may think proper to make.

8th. The grant petitioned for, having been definitely made, a patent signed by the political chief shall be issued, which shall serve as a

title to the interested party, expressing therein that the grant has been made in strict accordance with the provisions of the laws by virtue of which they shall proceed to give the possession.

9th. Of all the petitions presented and grants made, the corresponding entries shall be made in a book kept for that purpose, with the plats of the lands granted, and a detailed statement thereof shall be transmitted quarterly to the supreme government.

10th. A proposition shall be admitted for a new settlement, unless the person proposing the same bind himself to present as settlers twelve families at least.

11th. The political chief will determine the proportionate time in which the new settler shall occupy or cultivate the land under the terms and with the number of persons or families agreed upon, with the understanding that if said settler should fail to fulfil the conditions the grant of land shall be null and void; nevertheless, the political chief may confirm the same in proportion to the part which the interested party may have fulfilled.

12th. Every new settler, after having cultivated or occupied the land according to his agreement, shall prove such acts before the municipal authority, that making the proper entry his right to the property may be strengthened and confirmed, and thus enable him to dispose freely of it.

13th. The assemblage of several persons into a settlement shall follow, in their organization, interior government and policy, the rules established by the existing laws for the other settlements of the republic, taking especial care that the new settlements are laid out and built up with regularity.

14th. The minimum of irrigable land granted shall be for each individual 200 varas square; the minimum of farming (temporal) land shall be 800 varas, and the minimum of pasture lands (abrebadero) shall be 1200 varas.

15th. The land granted for a building lot shall be 100 varas.

16th. The vacant tracts of land lying between the colonized lands may be distributed among the adjoining owners who may have carefully cultivated their own, and have not received the quantity of land allowed by law, or to the children of those same owners who may have petitioned for them, in order to unite the possessions of their families, remembering very particularly to give the preference in such grants to the moral and industrious.

17th. In those territories where there are missions, the lands occupied by them cannot colonize at present, nor until it shall be resolved whether they are to be considered as the property of the settlements of neophytes, catechumens and of Mexican settlers.

The foregoing is a true copy.

Mexico, 21st of November, 1828.

ARTIZ DE LA TORRE.

Corrected. [A SCROLL.]

It is a true copy. Port of S. Diego, Nov. 29th, 1829.

(Signed) AUGUSTINE V. ZAMORANO.

I certify the foregoing to be a true and correct translation from the Spanish.

San Francisco, 14th April, 1852.

(Signed) GEO. FISHER, *Sec'y.*

I, Geo. Fisher, secretary of the board of commissioners to ascertain and settle the private land claims in the State of California, do hereby certify, that the foregoing 124 pages, numbered from 1 to 124, both inclusive, to contain true, correct and full transcript from the journal of proceedings of the said board, in case No. 56, Cruz Cervantes against the United States, for the place named San Joaquin, &c. I further certify the foregoing 117 pages, numbered from 125 to 240, both inclusive, to contain a true, correct and full copy of the original depositions of witnesses and other documentary evidence on file in this office in the same case.

In testimony whereof I hereunto set my hand and affix my private seal, not having a seal of office, at San Francisco, California, [L. S.] this twenty-second day of July, A. D. 1853, and of the independence of the United States of America the seventy-seventh.

(Signed) GEO. FISHER, *Sec'y.*

CRUZ CERVANTES, claimant,
vs.
UNITED STATES.

ATTORNEY GENERAL'S OFFICE,
Washington, D. C., July 11th, 1853.

You will please take notice, that the appeal in the above case from the decision of the commissioners to ascertain and settle the private land claims in the State of California, to the district court of the United States, for the northern district of California, will be prosecuted by the United States.

C. CUSHING,
Attorney General, United States.

To the Clerk of the district court of the United States, for the northern district of California, San Francisco.

DISTRICT COURT OF THE UNITED STATES,
For the northern district of California.

UNITED STATES, appellant,
vs.
CRUZ CERVANTES, appellee.

This day comes Cruz Cervantes by his attorney, and moves the court that the appeal herein be dismissed, on the ground—

1st. That the same has not been brought or perfected according to law.

2d. That the court has not jurisdiction in the premises.

By his attorney, WM. CAREY JONES.

At a special term of the district court of the United States of America, for the northern district of California, held at the court-house in the city of San Francisco, on Monday the 17th day of October, in the year of our Lord one thousand eight hundred and fifty-three.

Present, the honorable Ogden Hoffman, jr., district judge.

THE UNITED STATES, appellants,
vs.
CRUZ CERVANTES, appellee.

A motion to dismiss the appeal filed in this cause having been made by the counsel for appellee; and said motion having been argued by the said counsel for appellee and the U. S. district attorney, and due deliberation being had in the premises, it is now ordered, adjudged and decreed by the court, that said motion be denied; to which the said counsel for appellee in open court excepts.

United States district court, for the district of California.

UNITED STATES, appellants,
vs.
CRUZ CERVANTES, appellee.

Amended motion.

Cruz Cervantes, by his attorneys, makes this his amended motion, and moves the court that the appeal herein be dismissed, for these reasons:

I. That said appeal has not been brought or perfected according to law, in this—

1st. That the act of Congress, approved March 3d, 1851, entitled "An act to ascertain and settle private land claims in California," provides a time and mode in which the decisions of the commission, by the said act created, may be reviewed; the provisions of which act were duly accepted by the claimant, said Cruz Cervantes, by the presentation and subsequent prosecution of this claim before the said commission, whereby he became entitled to all the benefits of said act of Congress; and that the decision of said commission in his favor should be a final confirmation of said claim, unless proceedings for a review of the same were commenced and prosecuted in the time and manner prescribed in said act; and such proceedings have not been so commenced, and the time within which they might have been taken has elapsed.

2d. That in particulars not altered or proposed to be altered by any subsequent act of Congress, said appeal has not been brought or perfected according to, and the proceedings herein are not in conformity with, the provisions of said act of 3d March, 1851, or with law.

3d. That this appeal is in derogation of the rights of the plaintiff secured to him by the treaty between the United States and Mexico, commonly called the treaty of Guadaloupe Hidalgo, and proceedings thereunder.

4th. That it is in derogation of his rights under a compact with the United States, existing by virtue of said treaty, the said act of March 3d, 1851, enacted to carry into execution the said treaty, and the claimant's acceptance of the terms of said act.

5th. That by operation of law, and the provisions of said act of 3d March, 1851, the decision of said commission in this case has become final in favor of said claimant, and is not open to review or appeal.

II. That this court has not jurisdiction of said appeal, because—

1. In order to any jurisdiction over or cognizance of the proceedings or decisions of said commission, it is required that a petition be presented to the court, and a copy thereof served on the adverse party, praying said court to review the decision of said commission; and the same has not been done, and the time within which it might be done has elapsed.

2. There are now provisions lawfully established by which the decision of said commission in this case can be brought within the jurisdiction of this court, to prevent the ripening of the same into a decree of final confirmation, other than those set forth in said act of 3d March, 1851; and said provisions have not been complied with.

3. That the appeal has not been preceded, brought, or perfected by due process.

4th. That there are no provisions of law by which an appeal will lie from the decision of said commission herein.

5th. That this court has no appellate jurisdiction over the subject matter of this appeal, nor are the parties properly brought before it.

6th. That the said commission is not a court established under the 1st and 2d sections of the 3d article of the Constitution of the United States, the tenure of office of said commissioners not being that of good behavior, but at the will of the President of the United States, and their jurisdiction special; and that the claimant has not consented to have his rights tried or heard other than by due course of law, except by his acceptance of the terms of said act of 3d March, 1851; and this appeal is not brought or prosecuted in accordance with said act, or his said consent; and he now protests against, and does not consent to, the imposition of any new terms, or that this court shall take jurisdiction of any appeal herein.

7th. That the said act of 3d March, 1851, is not a law enacted by Congress in its legislative or law-giving capacity, but is in the nature of a proposal made under its administrative and judicial powers, as custodian and agent for the disposition of the lands and other property of the United States, according to the 4th article of the Constitution; the acceptance of which proposal by the claimant made the same a contract in no respect different from a like contract between any two individuals, and not to be varied or departed from by either without the consent of the other; and this appeal is not brought according to the terms of the said proposition and contract; and this claimant, being one of the parties thereto, has not consented, and now protests against,

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and does not consent to any variance of or departure from the same, and to this court taking jurisdiction of this appeal.

8th. That the said commission is not a part of the judiciary of the United States, or established by Congress in its legislative or law-giving capacity, or by the Government of the United States in its political or governmental capacity, but is a special tribunal, established in pursuance of the administrative and fiduciary powers of Congress as custodian and agent of the lands and other property of the United States, and has no jurisdiction, and consequently no appeal or other process can lie from, except by consent; and no consent, expressed or implied, has been given to this appeal.

9th. That this court cannot have appellate jurisdiction from a tribunal constituted otherwise than according to sections 1 and 2 of article 3 of the Constitution, unless by consent; and such consent is not given in this case.

10th. That this court has no appellate jurisdiction under the Constitution and laws of the United States.

Wherefore said claimant prays that said appeal be dismissed, and that a decree or order of final confirmation of his said claim, with an order of survey of the same, be made, according to the provisions of the said act approved 3d March, 1851. By his attorneys,

(Signed) JONES & STRODE,
Survivors of Jones, Tompkins, and Strode.

At a special term of the district court of the United States of America, for the northern district of California, held at the court-house in the city of San Francisco, on Monday, the 17th day of October, in the year of our Lord one thousand eight hundred and fifty-three.

Present, the honorable Ogden Hoffman, jr., district judge.

THE UNITED STATES, appellants,
vs.
CRUZ CERVANTES, appellee.

This cause having come up on an amended motion to dismiss the appeal filed in this cause, made by the counsel for appellee; and said amended motion having been argued by the said counsel for appellee and the U. S. district attorney, and due deliberation being had in the premises, it is now ordered, adjudged, and decreed by the court, that said amended motion be denied; to which the said counsel for appellee in open court excepts.

UNITED STATES DISTRICT COURT,
Northern district of California.

UNITED STATES, appellants,
vs.
CRUZ CERVANTES, appellee.

Cruz Cervantes, by his counsel, moves the court that this appeal and all proceedings in this case be dismissed, because—

1st. The facts necessary to give jurisdiction of said cause to this court are not alleged or averred by the party appellant.

2d. The facts necessary to give jurisdiction of said cause to this court are not apparent on the record of the cause.

3rd. The facts necessary to bring this cause within the jurisdiction of this court are not proved.

4th. Because the land in controversy in this cause is not within the territorial jurisdiction of this court.

5th. Because the parties herein are not within the jurisdiction of this court.

6th. Because the appellee (so called) herein is not within the jurisdiction of this court.

7th. Because the appellee (so called) herein has not been brought before this court by due process of law.

8th. Because the facts necessary to bring this cause within the jurisdiction of this court are not averred, do not appear, are not proved, and do not exist.

9th. That the record does not show, nor is it shown, alleged, or proved, that notice was given by the attorney general of the United States of the intention of the United States to prosecute this appeal within six months after he received the transcript of the proceedings and the decision of the commissioner to ascertain and settle the private land claims in California.

10th. The record does not show, nor does it appear, that said attorney general ever received said transcript.

JONES & STRODE,
For CERVANTES.

At a special term of the district court of the United States of America, for the northern district of California, held at the court-house in the city of San Francisco, on Friday, the 21st day of October, in the year of our Lord one thousand eight hundred and fifty-three.

Present, the honorable Ogden Hoffman, jr., district judge.

THE UNITED STATES, appellants,
vs.
CRUZ CERVANTES, appellee.

A motion to dismiss the appeal filed in this cause having been made by the counsel for appellee, and said motion having been argued by the said counsel for appellee and the U. S. district attorney, and due deliberation being had in the premises, it is now ordered, adjudged, and decreed by the court, that the said motion be denied; to which the said counsel for appellee in open court excepts.

THE UNITED STATES, appellant,
vs.
CRUZ CERVANTES, appellee.

This case comes up on appeal from the decree of the "Board of

Commissioners to *to* ascertain and settle private land claims in California." Could I have consulted my inclinations I should have refrained from expressing opinions upon any of these cases, and would willingly have contented myself with affirming, pro formâ, every decision of either the former or the present board, and remitted the case to that tribunal by whose decision alone this question will finally be determined. But I have not felt at liberty to shrink from this part of the duties imposed on this court, nor to withhold the expression of its opinions, however immaterial as regards the final result its decisions may be. If those opinions shall in some points differ from the conclusions at which the board of commissioners has in this case arrived, it is with the full knowledge that their opportunities for examination and consideration have been far greater than my own, and that in dissenting from them I may fall into error. Were the consequences of my decision more serious, it would not be without great regret that I should find myself led to a conclusion differing in any respect from the opinions of so able and learned a tribunal.

By the 5th article of the rules and regulations of November 21st, 1828, prescribed by the general government in pursuance of the 16th article of the general colonization law of 1824, it is provided "that grants to private persons or families shall not be held definitively valid without the previous consent of the territorial deputation, to which end the respective expedientes shall be forwarded to it."

In this case no approval of the territorial deputation is shown.

It is clear, from the very terms of this law, that to constitute a definitively valid or perfect title, two things were necessary—1st. A concession by the governor; and 2d. The approval by the territorial deputation, or, in the event of their refusal, by the supreme government.

It is contended that the original grant or concession by the governor passed a perfect title or estate in fee to the claimant, subject only to the condition that it might be annulled by the refusal of both the territorial deputation and the supreme government to confirm it.

I have been unable, after much care, to assent to this construction of the law of 1828.

The concession does not, on its face, purport to be an absolute grant, for the land is declared to be the "property of the petitioner, subject to the approval of the deputation."

The right of granting being by law vested in the governor, with the approval of the deputation, or, in case of their refusal, that of the supreme government, I have been unable to perceive how, without such approval, the complete title can be deemed to have passed.

If the refusal of the deputation is considered merely a condition subsequent, which on its happening would divest a fee previously vested, the effect attributed to it is precisely that of the other conditions of the grant, admitted to be conditions subsequent. But these conditions operated on an estate supposed to have become "definitively valid." Can it be said that that which the law declares necessary to the defini-

tive validity of a grant is identical in its effect with a condition which on its happening will divest an estate already definitively valid?

That the grant by the governor had some validity is not denied. It was the performance of a part, perhaps the most important part of the acts necessary to complete the title. But it was not the performance of all; nor did it purport to be. Until, then, either the territorial deputation or the supreme government had given their approval, the grant remained "not definitely valid," or in other words, inceptive or incomplete, and a confirmation and patent by the U. S. are necessary to pass the absolute title to the claimant.

Any other view of this question would, it seems to me, deprive the deputation of the important functions entrusted to them.

The right was not merely a qualified right to take from a petitioner land already absolutely granted to him, but it was the right to say whether or not the land should be granted to him at all. And until they or the supreme government had consented to the grant, the absolute or complete title cannot be deemed to have passed out of the Mexican nation.

The title, then, of the claimant being found to be inchoate or imperfect, his right to a confirmation by, and perfection of it by the Government of the U. S. must be tested by the principles laid down in similar cases by the Supreme Court.

Had he gone on to perform the conditions and to confer the benefits on the Mexican nation as stipulated for in his grant, no objection could be urged why this Government, succeeding as it does to all the rights and duties of Mexico, should not perfect his title. That the settlement and cultivation of the vacant lands of the republic formed the sole consideration of these grants is not disputed; and in this particular case the ability of the petitioner to render this equivalent for his concession seems to have been the subject of particular investigation; for the governor is at pains to inform himself whether or not the petitioner had, as he alleged, any stock to put upon the land or the means of getting any.

The grant bears date on the 1st April, 1836, and is made on condition, among other things, that the petitioner shall "within one year at furthest," build on the land a house which shall be inhabited.

"It is subsequently provided that should he contravene these conditions, he shall lose his right to the land, and it may be denounced by another."

The judicial possession which the grant directs him to solicit of the respective judge was never applied for until the year 1841, and no occupation or cultivation of the land by him is distinctly shown until the year 1846, ten years after the grant. The witness, Godey, testifies that in 1846 he saw the claimant residing on the rancho, and adds, that the house he lived in seemed to be several years old.

Pacheco, the only other witness on this point, states that he does not exactly recollect the time when the claimant began to reside on his

ranch, but thinks it was about two years after the revolution of Chico and Gutierrez.

So far then as appears, there was a total neglect on the part of the claimant to comply with the conditions of his grant for a period of from five to eight years.

If, then, we are right in regarding the title he has received only as inchoate or imperfect, the necessary authorities not having concurred in making the grant, the inquiry presents itself, what is his right to demand of the United States that they should go on perfect it?

There is no doubt that, under the treaty as well as by the laws of nations, such title as the claimant had acquired when the sovereignty was changed was secured to him as his private property, and the question is, what was that right according to the laws and customs of Mexico at the time of the cession?

If the title is to be decreed and a patent awarded, it must be on the same grounds as those on which the Mexican authorities would have been bound to decree it, had a perfect title been solicited from them. De Vilemont vs. the U. S., 13 Howard, p. 267; Glen vs. The United States, 13 Howard, p. 257.

The rule, as laid down in the U. States vs. Kingsley, 12 Peters, 484, is, "that the U. S. succeeds to all those equitable obligations which we are to suppose would have influenced the former government to secure to its citizens their property, and which would have been applied by it in the construction of a conditional grant to make it absolute; and further, that the United States must maintain a right of property under the treaty, by applying to it the laws and customs by which those rights were secured before the cession of the country, or by which an inchoate right of property would by laws and customs have been adjudicated by Mexican authority to have become a perfect right."

The inquiry is not so much what the Mexican authorities, had there been no change in the circumstances of the country or in their policy, have in point of fact done, as what were they by their laws and customs and in equity and good conscience bound to do; were they bound to perfect the title of this claimant, or were they at liberty to consider his rights as abandoned and lost, to refuse to accept after so long a delay his performance of the conditions of his concession, and treat the land as having reverted to the public domain, to be disposed of as circumstances or policy might require? Upon the solution of this question must depend, I conceive, the rights of the claimant in this case.

Grants or concessions of land upon condition have been repeatedly confirmed by the Supreme Court.

"It will," it declares, "liberally construe a performance of conditions precedent or subsequent in such grants, nor will it apply in the construction of such conditions the rules of the common law." U. S. vs. Kingsley.

Thus, where the full performance of the condition must have been a matter of indifference as well to the King of Spain as to the U. S.,

after the cession of Florida, it appearing that a performance had been commenced within the time limited, the grant was confirmed. Arredondo's case, VI Peters.

So where the grantee had in good faith begun to build his mill, (which was the condition of the grant;) expended five thousand dollars towards it; had his horses and negroes stolen while his mill was being built; his mill dam carried away by a freshet; had rebuilt his mill in 1827, which was destroyed by fire the same year, and the year after built another of 70 horse power, the court determined that the claimant had shown a sufficient performance of the condition cy-près, and that the acts he had done amounted to a compliance of the condition according to the equitable doctrines governing such cases. On the other hand, where, by the conditions of the grant, one year was allowed for making the improvements required by the regulations, and three years for making an establishment on the premises, and the claimant never took possession of the land until long after the session of the country, the court rejected the claim, disregarding the excuses made by him that hostility of the Indians and official duties prevented him; and observing that as to the first he took his concession subject to that risk; and as to the second, that he held his office when the cession was made, and knew its duties. The court even go so far as to say with reference to the condition, "that it was undoubtedly necessary that an establishment should be made within three years; such being the requirement of the concession in concurrence with the regulations."

In Boisdore's case, the consideration of the grant was that a stock-farm should be established on the land solicited, and that such establishment was to be for all the family of the petitioner, and on it he was to employ all his force of negroes.

The evidence showed an occupation of the land for 40 years; that it had been cultivated to some extent from the date of the grant, and that stock had been kept there; but that such occupation had been only by a single mulatto, and that the petitioner had entirely abandoned the idea of taking his whole family to the place and employing all his negroes there. The court considered it altogether inadmissible to hold that such trifling occupation in utter neglect of Boisdore's promises to the Spanish authorities and the duties imposed by his grant, fastened an equity on the conscience of the King of Spain to complete the grant.

It may be proper to remark, however, that it is stated in the dissenting opinion of Mr. J. McLean, that the grant was rejected by the majority of the court for want of certainty in its calls. (11 Howard, 63.)

It is urged with much earnestness and ability by the counsel for the claimant, that the only penalty attached to the non-performance of the conditions of the grant was that the land was liable to be denounced by another, and that upon such denouncement it might have been regranted if then vacant; but that no such denouncement having been made, nor the Mexican authorities availed themselves in any way of

their right to treat the land as having reverted to the public domain, and the petitioner having gone on to perform the condition with the acquiescence of the government, he ought not now to be disturbed. I am deeply impressed with the force of these considerations. But if the view taken of the effect of the absence of the approval of the deputation be correct, the land cannot be deemed to have been at any time finally alienated by the Mexican authorities; and the question is not whether a forfeiture should be insisted upon, but whether the United States are bound to complete a transfer of their property which has as yet been only partially made.

It cannot, I think, be denied that after the expiration of the year from the date of the grant, and up to the time when the claimant performed the conditions, the land, by Mexican law and usage, might have been denounced and regranted; such was the express provision of the condition of the grant. But that condition also provides that in the event referred to, the petitioner "shall lose his right to the land." Whether or not, in the case of a complete and final grant, the Mexican government could only take advantage of a forfeiture by the process of "denouncement," it is not necessary to inquire; for this is not a complete grant. It would seem far more reasonable to suppose that it could. The condition provides that the petitioner "shall lose his right to the land" in case of its violation. If upon denouncement of the land it could have been regranted, it would seem that the government must have had the right to make any other disposition of it which any change in their policy might require. Whether such regrant or other disposition would have been made without a previous inquisition into the fact of forfeiture, is not very clear.

By the 11th article of the regulations of 1828 it is provided, that the governor shall designate to the new "poblador" a suitable time within which he shall occupy and cultivate the lands under the conditions and with the number of families stipulated for, with the understanding that if he shall not do so the grant shall be null. In this case at least it would seem that the title revested in the govern.nent ipso facto on the happening of the breach.

But the inquiry in this case is immaterial, for the full title has never passed out of the Mexican nation, and the question is not whether the United States acquired by the treaty a right to enforce a forfeiture, but whether the claimant has a right to require this government to complete his title.

No facts appear on the Record which serve to explain or excuse the long delay of the claimant, nor is there any very distinct proof of the nature of the occupation he finally took, or at least of the extent of the cultivation or amount of expenditures made by him upon the land.

Had the Mexican government at the time of the cession of this country found itself in the precise position of the United States, with its interests, its policy and the circumstances of the country radically changed, it is more than doubtful whether it would or ought to have

felt itself bound to complete this grant, as the United States are now urged to do. If there was no obligation to do so upon them, and they were at liberty to refuse or comply, we are in the same situation, and the confirmation of this title must be obtained from another department of this government.

Were I at liberty to follow blindly the dictates of my own judgment, I might perhaps have confirmed this title; but governed, as I am bound to be by the principles established in the decisions of the Supreme Court, I cannot resist the conviction that a confirmation of this claim would be a departure from the spirit, if not the letter of the rules of decision laid down in the more recent cases. If those rules are hereafter to be modified or departed from, it must be by the decisions of the tribunal by which they were established; and if in this case the equities of the claimant can receive at its hands a more liberal construction and a more favorable consideration than I have felt at liberty to give them, no one will acquiesce in the result more cheerfully than myself.

Since the above was writen I have been informed by Señor Corranubias, an intelligent Mexican gentleman of the country, that the revolution of Chico and Gutierrez occurred in the year 1836.

The "revolution" seems to have been one of those transient and slight disturbances so common in the country, and more to be likened to the outbreak of a mob or a riot in a city than one of those historical events of which judicial notice could be taken.

But assuming that the court is judicially informed of the date of its occurrence, the claimant has still under Pacheco's testimony failed to comply with the conditions of his grant for more than a year after the expiration of the time limited for their performance, nor does he prove, allege or pretend the slightest excuse for so doing.

But the testimony of Pacheco is inconclusive. That witness says that "he does not exactly recollect the time when the claimant commenced residing on his ranch, but believes it was about two years after the revolution of Chico and Gutierrez."

The evidence however shows that judicial possession was not applied for until 1841—5 years after the grant. Pacheco was one of the assisting witnesses on that occasion, and yet he does not say that at that time even the claimant had either built a house or cultivated the land.

If the witness, who in 1846 saw a house on the rancho "which seemed to be several years old," is to believed, the fair inference is that the house could not have been built before 1842 or 1843—6 or 7 years after the grant.

On the whole, I conclude that there having been no performance, or attempt at performance until long after the expiration of the term limited, and no excuse being suggested or pretended, I am not at liberty, under the rulings of the Supreme Court, to confirm the incomplete title of the claimant.

Upon the other questions made in this case it is unnecessary to express an opinion.

At a special term of the district court of the United States of America, for the northern district of California, held at the court-house in the city of San Francisco, on Monday, the 31st day of October, in the year of our Lord one thousand eight hundred and fifty-three.

Present, the honorable Ogden Hoffman, jr., district judge.

THE UNITED STATES, appellants,
vs.
CRUZ CERVANTES, appellee.

This cause coming on to be heard at the above stated term, on appeal from the final decision of the commissioners to ascertain and settle private land claims in the State of California, under the act of Congress approved 3d of March, 1851, upon the transcript of the proceedings and decision, and the papers and evidence on which said decision was founded; and it appearing to the court that said transcript has been duly and regularly filed in pursuance of the 12th section of the act of Congress approved August 31st, 1852.

And the argument of counsel for the United States and for the claimant being heard, it is ordered, adjudged, and decreed that the decision of the said commissioners be in all things reversed and annulled; and that the said claim be held invalid and rejected.

(Signed) OGDEN HOFFMAN, JR.,
U. S. district judge.

United States district court of the northern district of California.

UNITED STATES, appellants,
vs.
CRUZ CERVANTES, appellee.

And on this day comes Cruz Cervantes, by his attorneys, and makes application that this court grant an appeal from the decree, judgment, or decision of this court herein, to the Supreme Court of the United States.

By his attorneys, JONES & STRODE,
Survivors of Jones, Tompkins & Strode.

The above motion having been heard by the court, it is ordered that an appeal in the above cause be granted, on filing security in the sum of two hundred and fifty dollars, to be approved by the judge.

OGDEN HOFFMAN, JR., *U. S. district judge.*

District court of the United States of America, northern district of California, sitting at San Francisco, county of San Francisco.

CRUZ CERVANTES, claimant and appellant,
versus
THE UNITED STATES, appellee.

Know all men by these presents, that we, Cruz Cervantes, William Cary Jones, and Charles B. Strode, of the State of California, are

held and firmly bound to the above named United States in the sum of two hundred and fifty dollars, to be paid to the said appellee, for the payment of which well and truly to be made we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals and dated the thirtieth day of October, in the year of our Lord one thousand eight hundred and fifty-three.

Whereas the above named appellant has prosecuted an appeal to the Supreme Court of the United States, at Washington, in the District of Columbia, to reverse the decree rendered in the above suit by the district court of the United States, for the northern district of the State of California: now, therefore, the condition of this obligation is such, that if the above named appellant shall prosecute his appeal to effect, and answer all damages and costs if he fail to make his appeal good, then this obligation shall be void, otherwise the same shall remain in full force and virtue.

CRUZ CERVANTES,
By his attorney, Wm. Cary Jones, [L. S.]
WM. CARY JONES, [L. S.]
C. B. STRODE. [L. S.]

In presence of—
OGDEN HOFFMAN, jr.

Approved the 31st October, 1853.

OGDEN HOFFMAN, JR.,
U. S. district judge.

CRUZ CERVANTES, appellant,
vs.
THE UNITED STATES, appellee.

To the honorable the Supreme Court of the United States.

The appeal of the above named appellant respectfully showeth, that on the day of , he, the said Cruz Cervantes, presented before a certain commission, appointed in pursuance of an act of the Congress of the United States approved on the 3d day of March, A. D. 1851, his claim for a certain tract of land situated in the State of California, and to him derived from the Mexican Government; that the city and county of San Francisco, in the said State, on and prior to the 3d day of August, A. D. 1852, said case or claim being ready for hearing, the same was heard by said commission in pursuance of said act of Congress, and on said 3d day of August, A. D. 1853, said commission, pursuant to said act of Congress, proceeded to decide on the validity of said claim of said Cruz Cervantes, and then and there rendered a decision on the same, and decided the said claim to be valid, and accordingly confirming the same. That on the an additional act was performed by said commission, further deciding and declaring the said claim of said Cruz Cervantes

to be valid, and confirming the same as aforesaid. That afterwards, to wit, on or about the 21st of September, 1853, the said Cruz Cervantes was informed by report outside of the record of this cause, and wholly extra-judicial, that a proceeding seeking to set aside, reverse, and annul said acts, decisions, and confirmations of said commission were had, were attempted to be had in the district court of the United States, for the northern district of California, sitting in San Francisco, and thereupon the said Cervantes appeared by his attorneys, to remonstrate and protest against said proceedings or attempted proceedings in said district court as irregular, unlawful, and altogether without the jurisdiction, territorial and otherwise, of said district court; that his said protests, remonstrances, and motions were overruled by said district court, and in spite thereof, and of his non-consent and refusal to recognise the jurisdiction of the said district court thereof, and that he was not before the said court by any judicial or other lawful process, the judge of said district court nevertheless undertook jurisdiction therein, made therein the following order:

"At a special term of the district court of the United States of America, for the northern district of California, held at the court-house in the city of San Francisco, on Monday, the 17th day of October, in the year of our Lord one thousand eight hundred and fifty-three.

"Present, the honorable Ogden Hoffman, jr., district judge.

THE UNITED STATES, appellants,
vs.
CRUZ CERVANTES, appellee.

"On motion to dismiss the appeal filed in this cause having been made by the counsel for appellee, and said motion having been argued by the said counsel for appellant and the U. S. district attorney, and due deliberation had in the premises, it is now ordered, adjudged, and decreed by the court that said motion be denied, to which the said counsel for appellee in open court excepts;" which said order and decree, and of all of which said proceedings of said district court, and the overruling and denying of said motions, are, as this appellant is advised, erroneous and extra-judicial, and ought to be set aside, annulled and reversed.

Wherefore, this appellant appeals from the whole of said order and decree, and from the overruling of his said motions, and from all proceedings of said district court herein, to the Supreme Court of the United States; and respectfully prays that the said order or decree of the said district court, and all the pleadings and evidence and proceedings in said cause, may be sent to the Supreme Court of the United States without delay; and that the said Supreme Court will proceed to hear the said cause anew; and that the said order or decree, and all the proceedings of the said district court, and every part thereof, may be set aside, annulled and reversed, and a decree made declaring